

37 See books in 2535  
No. 2539

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**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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THOMAS W. PACK, STELLA SCHULER and  
JOSEPH K. HUTCHINSON,  
Appellants,  
vs.  
E. THOMPSON,  
Appellee.

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**Transcript of Record.**

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Upon Appeal from the United States District Court for  
the Southern District of California,  
Southern Division.

**filed**

**JAN 25 1915**

**F. D. Monckton,**  
**Clerk.**



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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### **Names and Addresses of Attorneys.**

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MESSRS. CLAYBERG & WHITMORE, 937  
Pacific Building, San Francisco, California;  
and

R. P. HENSHALL, Esq., Los Angeles California. [3\*]

### **Citation on Appeal (Original).]**

United States of America,—ss.

The President of the United States, to E. Thompson  
Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Southern District of California, Southern Division, wherein Thomas W. Pack, Stella Schuler and Joseph K. Hutchinson are appellants, and you are appellee,

\*Page-number appearing at foot of page of original certified Record.

to show cause, if any there be, why the decree rendered against the said appellants, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable BENJAMIN F. BLEDSOE, United States District Judge for the Southern District of California this 26 day of December, A. D. 1914.

BENJAMIN F. BLEDSOE,  
United States District Judge. [4]

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*In the District Court of the United States, in and  
for the Southern District of California, South-  
ern Division.*

No. B. 50—EQUITY.

E. THOMPSON,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER, and  
JOSEPH K. HUTCHINSON,

Defendants. [5]

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*In the District Court of the United States, Southern  
District of California, Southern Division.*

**Bill in Equity.**

E. THOMPSON,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER, and  
JOSEPH K. HUTCHINSON,

Defendants.



Now comes the above-named complainant and for cause of action against defendants above-named complains and alleges:

That complainant is now, and at all times hereinafter stated, was a citizen of the United States and of the State of New Jersey, and a resident of the State of *New Jersey*; that the defendants Thomas W. Pack, Stella Schuler and Joseph K. Hutchinson, and each of them, now are, and at all times hereinafter mentioned were citizens of the United States and of the State of California, and residents of the State of California; that the amount in controversy between the plaintiff and defendants herein in this action exceeds, exclusive of costs and interest, the sum of Three Thousand Dollars (\$3,000.00); that the real estate and placer mining claims affected by this suit are situate in San Bernardino County, State of California, that neither the said complainant nor the said defendants, or either of them, are now, nor for a long time prior to the commencement of this suit, have they or either of them been in the actual possession of the said placer mining claims, hereinafter particularly described.

#### I.

That during the year 1910, plaintiff jointly with one H. C. Fursman, W. Huff, H. A. Baker, R. Waymire, P. Perkins, D. Smith and defendant, Thos. W. Pack, duly located and recorded twelve certain [6] placer mining claims, hereinafter more particularly described, situate in and upon Searles Borax Lake, County of San Bernardino, State of California; that plaintiff is now, and ever since the date of said loca-

tions, has been the owner and holder of a one-eighth undivided interest in and to the said placer mining claims and each of them; that the said twelve placer mining claims above referred to are more particularly described, named and numbered as follows, and are more fully described in said notices of locations, copies whereof are recorded in the office of the County Recorder of San Bernardino County, State of California, in Volume 82 of Mining Records, at the pages of said volume hereinafter designated following the respective names of said placer mining claims, to wit:

"The Soda No. 68 Placer Mining Claim," at page 164 thereof;  
"The Soda No. 69 Placer Mining Claim," at page 165 thereof;  
"The Soda No. 70 Placer Mining Claim," at page 165 thereof;  
"The Soda No. 71 Placer Mining Claim," at page 166 thereof;  
"The Soda No. 72 Placer Mining Claim," at page 166 thereof;  
"The Soda No. 87 Placer Mining Claim," at page 174 thereof;  
"The Soda No. 88 Placer Mining Claim," at page 174 thereof;  
"The Soda No. 89 Placer Mining Claim," at page 175 thereof;  
"The Soda No. 90 Placer Mining Claim," at page 175 thereof;  
"The Soda No. 91 Placer Mining Claim," at page 176 thereof;  
"The Soda No. 111 Placer Mining Claim," at page 186 thereof;  
"The Soda No. 112 Placer Mining Claim," at page 186 thereof;

## II.

That during the month of September, 1914, the above-named defendants caused to be served upon plaintiff, a paper which purports to be a notice of forfeiture, a copy of which said so-called "Notice of Forfeiture" is hereto attached, marked Exhibit "A" and made a part hereof. That in and by said pretended Notice of Forfeiture it appears that all of plaintiff's right, claim, title [7] and interest in

and to the said twelve above described placer mining claims, and each thereof, will be forfeited and a cloud cast upon plaintiff's title thereto within ninety days from the date of service of said so-called Notice of Forfeiture upon this plaintiff, unless plaintiff, within said ninety days, pays to defendants or to defendant, Joseph K. Hutchinson, for said defendants, the sum of \$150.00, claimed to be one-eighth of the total amount of money claimed to have been expended by said defendant Pack upon said claims in the year 1911 as recited in said pretended Notice of Forfeiture. (Exhibit "A.")

### III.

Plaintiff alleges that the said defendant, Thos. W. Pack, did not expend, or cause to be expended, during the year 1911, or during any other year, or at any other time, or at all, the sum of \$1,200.00, or any part or portion thereof, or any other sum or sums or any sum at all of his own money or funds upon said twelve above described placer mining claims, or upon any of them, or upon any placer mining claim or claims located and recorded by this plaintiff, or by this plaintiff and others, or in which this plaintiff had or has any interest, in the County of San Bernardino, State of California, or elsewhere, for labor and improvements, or for labor or improvements thereupon, or upon any of them, or for any purpose whatsoever, or at all. Plaintiff further alleges that the said Thos. W. Pack did not expend or cause to be expended, during the year 1911, or during any other year, or at any other time, or at all, the sum of \$100.00 or any part or portion thereof of his own money

or funds, or any other sum or sums, or any sum at all, upon each, or upon any or all of said above described twelve placer mining claims, or upon any placer mining claim or claims, located and recorded by this plaintiff, or by this plaintiff and others, or in which this plaintiff had or has any interest in the County of San Bernardino, State of [8] California, or elsewhere, for labor and improvements, or for labor or improvements thereupon, or upon any of them, or for any purpose whatsoever, or at all.

#### IV.

That said pretended Notice of Forfeiture does not, in any way, describe the kind, character or nature of the pretended labor and improvements, or labor or improvements, claimed to have been done and performed upon said claims, or any of them, during the year 1911, by the said Thos. W. Pack.

That plaintiff is unable to ascertain from said pretended Notice of Forfeiture whether the said defendant Pack claims to have actually expended, of his own money or funds, in labor and improvements, or in labor or improvements, upon each of said placer mining claims, the said sum of \$100.00, or the sum of \$1,200.00 upon all of them, or any other sum or amount, or Whether the said defendant Pack claims to have expended such money in the transportation of men and supplies to Searles Borax Lake for the purpose of having done upon each and all of said placer mining claims the annual representation work for the year 1911; that plaintiff cannot ascertain from the said pretended Notice of Forfeiture whether the amounts claimed to have been expended

by said defendant Pack of his own money or funds upon said placer mining claims, or upon any of them, if he ever expended any money at all thereon, was the value of \$100.00 for each claim, or of the value of \$1,200.00 for all, or whether such labor and improvements, or labor or improvements increased the value of each of said claims in the sum of \$100.00, or the value of them all in the sum of \$1,200.00, or whether said pretended labor and improvements, or labor or improvements, tended in any way to develop any or all of said placer mining claims, or increased or aided in availability for taking ores or minerals from said claims, or from any of them; that this plaintiff further alleges upon [9] information and belief that the said defendant Pack, if he expended any of his own money or funds pretending to be for or in the representation of said placer mining claims, or any of them, for the year 1911, expended a greater part or portion, or all of such money, in the transportation of men and supplies to Searles Borax Lake, San Bernardino County, California, where said placer mining claims are located, as aforesaid, and in furnishing and supplying food, wearing apparel, delicacies and luxuries to the men so transported to said Searles Borax Lake for the purpose of performing said representation work during said year upon said claims.

That said pretended Notice is executed, made and signed by defendants Thos. W. Pack, S. Schuler and Joseph K. Hutchinson; that the same discloses upon its face that neither the said Schuler or the said Hutchinson, or either, or both of them, had any in-



terest or ownership in or to the said placer mining claims mentioned therein, or in or to any part or portion of them, during the year 1911, or during the time it is claimed Thos. W. Pack expended money for labor and improvements thereon, and that neither the said S. Schuler, or the said Joseph K. Hutchinson ever expended, or caused to be expended the money named in said pretended Notice of Forfeiture, or any money thereon.

V.

That on or about the 25th day of December, 1913, defendant S. Schuler made, executed, acknowledged and delivered her deed and conveyance to one J. A. Shellito, whereby she transferred and conveyed to said J. A. Shellito all of her right, title and interest in and to said above described placer mining claims, together with her right, title and interest in and to certain other placer mining claims therein described; that thereafter and on or about the 14th day of January, 1914, the said defendant Schuler assumed to convey to defendant Hutchinson the same interest and property [10] that she, the said defendant Schuler, had theretofore conveyed to the said J. A. Shellito, as hereinabove alleged; that the said defendant Hutchinson, at the time of receiving said conveyance was fully informed and had full knowledge that the said defendant Schuler had conveyed all the rights, interest, claims and property therein described to the said J. A. Shellito, a long time prior to the execution of said conveyance by said Schuler to said Hutchinson; that plaintiff further alleges that the said Hutchinson took said conveyance from

the said defendant Schuler for the sole and only use and benefit of the Foreign Mines and Development Company, the American Trona Company and the California Trona Company, or for all or a part of them, and not for his own use and benefit, and in pursuance of a combination and conspiracy by and between these defendants in this suit and the said Foreign Mines and Development Company, the American Trona Company and the California Trona Company, wherein and whereby the said defendants, and the said above named corporations confederated and combined together to injure plaintiff and to deprive and defraud him of all his right, title and interest in and to said above described placer mining claims.

## VI.

Plaintiff further alleges upon his information and belief that the pretended transfer of the said one-eighth interest of the said Thos. W. Pack in and to these said above described claims by the said S. Schuler to the said Joseph K. Hutchinson, if such transfer was made at all, as set forth in said pretended Notice of Forfeiture, was made and done pursuant to and in order to carry out a combination and conspiracy to injure plaintiff and to deprive and defraud him of all of his right, title and interest in and to said placer mining claims and each and all of them; that the said pretended transfer to the said Joseph K. Hutchinson by the said S. Schuler was made and done, if made and done at all, wholly and totally without a valuable or other consideration; [11] that if any consideration at all was paid by

the said Joseph K. Hutchinson to the said S. Schuler for the said transfer, the same was advanced and paid by the Foreign Mines and Development Company, a corporation, or by the American Trona Company, a corporation, or by the California Trona Company, a corporation, or by part or all of them, or by some person or persons authorized by them, or part or all of them, or acting for them, or for part or all of them, and on their behalf, or on the behalf, of part or all of them; that the said Joseph K. Hutchinson took the title to the said one-eighth interest in and to these said above described claims, if he took the title at all, for the sole benefit and use of the said Foreign Mines and Development Company, or the American Trona Company, or the California Trona Company, or for part or all of them, and not for his own use and benefit; that the said Joseph K. Hutchinson now claims to hold the said title to the said one-eighth interest in and to the said above described claims, if such title ever passed to him, for the sole and only use and benefit of the said Foreign Mines and Development Company, the said American Trona Company, the said California Trona Company, or for the sole use and benefit of part or all of them, and not for his own use and benefit.

Plaintiff further alleges that the Foreign Mines and Development Company, the American Trona Company and the California Trona Company claim rights and interest in and to the mineral lands covered by said placer locations so made and recorded by plaintiff and others, as hereinabove alleged, and that said Foreign Mines and Development Company,



the American Trona Company and the California Trona Company have for some years last past been endeavoring to defeat the locations so made by plaintiff and others, as hereinabove alleged, and that the said Foreign Mines and Development Company, the American Trona Company and the California Trona Company have, and each and every of [12] them has, as plaintiff is informed and believes, fraudulently attempted to procure the right, title and interest of defendant, Pack, in and to said locations so made by plaintiff and others as hereinabove alleged, for the express purpose, and none other, of using the said interest of the said Pack in and to said locations, in such a way and manner as to destroy all of plaintiff's rights and interest therein, and to defraud this plaintiff out of all interest in and to said claims, and each of them; this plaintiff further alleges on like information and belief that the defendant, Joseph K. Hutchinson, has been acting as the agent, representative and attorney of the said Foreign Mines and Development Company, the American Trona Company and the California Trona Company, and each of them, in endeavoring to deprive and defraud plaintiff of his rights and title in and to said placer mining locations, as above alleged; that the said defendant, Joseph K. Hutchinson, under the direction and orders of the said Foreign Mines and Development Company, the American Trona Company and the California Trona Company, and each of them, fraudulently obtained said transfer of the said one-eighth interest in and to said placer mining claims, if he obtained said transfer at all, from defendant

Schuler, in pursuance to the combination and conspiracy entered into and carried on by and between said Foreign Mines and Development Company, the American Trona Company and the California Trona Company, and each of them, and the said defendants herein, and each of them, to injure plaintiff and defraud and deprive him of all of his right, title and interest in and to said claims, and each of them; that in further pursuance of said combination and conspiracy, and under the orders and direction of the said Foreign Mines and Development [13] Company, the American Trona Company and the California Trona Company, or all or part of them, said defendant Joseph K. Hutchinson, and the said defendants Schuler and Pack, caused to be served upon plaintiff the pretended Notice of Forfeiture above described (Exhibit "A"); that the fraudulent transfer of the said one-eighth interest in and to said claims by the said defendant Schuler to the said defendant Hutchinson, if any transfer was made at all, and the serving of the said pretended Notice of Forfeiture upon the said plaintiff as aforesaid, was all done in pursuance to and in the carrying out of a combination and conspiracy entered into by and between the said Foreign Mines and Development Company, the American Trona Company and the California Trona Company, or all or part of them, and the said defendants, and each of them, confederated together for the purpose of injuring plaintiff and depriving and defrauding him of all his right, title and interest in and to said placer mining claims above described.

## VII.

Plaintiff further alleges upon his information and belief that the said pretended Notice of Forfeiture was prepared and served upon him pursuant to and in the furtherance of such combination and conspiracy between the defendants herein and the said Foreign Mines and Development Company, the American Trona Company and the California Trona Company, and that the said Thos. W. Pack never, during the year 1911, or at any other time, expended, or caused to be expended, the sum of \$1,200.00 of his own funds or money, or any other sum or amount in and upon said claims, or upon one, or any of them, for any purpose whatsoever, and that neither he nor any of the defendants herein, or their co-conspirators are entitled to any contribution from plaintiff in any sum or amount whatsoever.

## VIII.

That plaintiff is informed and believes that none of the money [14] defendant Pack claims to have expended as and for representation work, or for labor and improvements, or labor or improvements on the above described claims, or any thereof, if expended by the said Pack at all, was expended by him for the actual representation and assessment work upon the said claims, or any of them, as required by law; but plaintiff alleges that defendant Pack paid the moneys set forth in the said pretended Forfeiture Notice, if he paid any money at all, for certain goods, wares and merchandise, furnished to certain laborers, employed by plaintiff and his co-locators doing assessment work on said claims in the years 1911 and 1912, and

for automobile hire in transporting said laborers and supplies to and from said placer mining claims.

### IX.

That on the 14th day of January, 1913, one W. W. Colquhoun, through his attorney, Joseph K. Hutchinson, one of the defendants herein, filed a suit against defendant Pack, one Henry E. Lee and one T. O. Toland, in the Superior Court of the State of California, in and for the City and County of San Francisco, which said suit is entitled "W. W. Colquhoun, Plaintiff, vs. Thos. W. Pack, Henry E. Lee and T. O. Toland, a Copartnership, and Thos. W. Pack, Henry E. Lee and T. O. Toland, as Individuals, Defendants, and numbered 46,604 in the records of the Superior Court of the City and County of San Francisco, State of California; that in the verified complaint in said suit plaintiff, W. W. Colquhoun, alleges that he is the assignor of C. J. and E. E. Teagle, and that the sum of \$750.00 is due him for certain goods, wares and merchandise sold and delivered to the said Pack and the other two defendants named in said suit, during the years 1911 and 1912, and that the same had never been paid. This plaintiff alleges upon information and belief that the said goods sued for in said action were purchased by said Pack from C. J. and E. E. Teagle in the town of Johannesburg, Kern County, California; that the whole amount of [15] said goods, wares and merchandise so purchased by the said Pack from the said Teagles was the sum of \$969.00 and that the said Teagles admit that the sum of \$219.00 has been paid upon said account; that this

plaintiff further alleges upon his information and belief that the said sum of \$750.00, sued for in said action, constitutes part of the amount which the said defendants in this suit claim in their said pretended Notice of Forfeiture (Exhibit "A") to have been paid by the said Thos. W. Pack in the year 1911 for doing the assessment work on the above described placer mining claims, and for the pretended payment of which the said defendants are now seeking contribution from this plaintiff and threatening a forfeiture of his rights and interests in and to said above described placer mining claims; upon his failure so to contribute, as recited in their said pretended Notice of Forfeiture; that on the 4th day of February, 1914, a judgment was rendered in said suit against the said Pack, in favor of plaintiff, in the whole amount sued for, which said judgment is now standing of record and docketed in Volume No. 29 of Judgments at page 484 of the records of the County Clerk of the City and County of San Francisco, State of California, and has never been satisfied or discharged, either in whole or in part, or set aside, vacated or modified.

### X.

That on the 20th day of January, 1913, one M. A. Varney, by his attorney, Joseph K. Hutchinson, one of the defendants herein, filed a suit in the Superior Court of the City and County of San Francisco, State of California, against defendant Thos. W. Pack, one Henry E. Lee and one T. O. Toland, which said suit was entitled in said Superior Court, "M. A. Varney, Plaintiff, vs. Thos. W. Pack, Henry E.



Lee and T. O. Toland, as individuals, and Thos. W. Pack, Henry E. Lee and T. O. Toland, a Copartnership, Defendants," and numbered 46,692 in the records of the said Superior Court; that in the verified complaint in said suit the plaintiff [16] therein, the said M. A. Varney, alleged that during the years 1911 and 1912 he furnished supplies and rendered services to defendant Thos. W. Pack and the other defendants therein, in the sum of \$4,180.00, of which said sum \$535.00 had been paid; that thereafter and on or about the 4th day of February, 1913, a judgment was entered in said action against the said Thos. W. Pack, in favor of plaintiff, in the whole amount sued for. That plaintiff is informed and believes and therefore alleges the fact to be that said judgment in said suit is still standing of record and has never been satisfied, set aside, vacated or modified. That plaintiff is informed and believes and therefore alleges the fact to be that the last above named action was brought by the said M. A. Varney to recover the sum of \$4,180.00 from the said Thos. W. Pack, Henry E. Lee and T. O. Toland, for the use of two certain automobiles and certain supplies furnished by the said M. A. Varney to the said Thos. W. Pack, at his special instance and request, in the years 1911 and 1912, and used by the said Thos. W. Pack to transport men hired by plaintiff and his co-locators to do the annual assessment work on said above described placer claims for said years, and supplies for said men, from the City of Los Angeles and elsewhere to the above described placer claims on Searles Borax Lake, San Bernardino

County, California; that plaintiff alleges upon his information and belief that the said sum of \$4,180.00 sued for in said action, constitutes part of the amount the said defendants in this suit claim in their said pretended Notice of Forfeiture (Exhibit "A") to have been paid by the said Thos. W. Pack in the year 1911 for doing the assessment work on the above described placer mining claims, and for the pretended payment of which the said defendants are now seeking contribution from this plaintiff, and threatening a forfeiture of his rights and interests to and to said above described placer claims upon his failure so to contribute, as recited in their said pretended [17] Notice of Forfeiture. (Exhibit "A.")

## XI.

That on the 2d day of September, 1913, one W. W. Colquhoun, by his attorneys, Joseph K. Hutchinson, one of the defendants herein, and Walter Slack, filed a suit in the Superior Court of the State of California, in and for the City and County of San Francisco, against this plaintiff and H. C. Fursman, W. Huff, P. Perkins, H. A. Baker, R. Waymire, D. Smith and S. Schuler, to recover the sum of \$750.00 alleged to be due said plaintiff for the value of certain goods, wares and merchandise, which said suit is entitled in said Superior Court, "W. W. Colquhoun, Plaintiff, vs. H. C. Fursman, W. Huff, R. Waymire, P. Perkins, H. A. Baker, E. Thompson, D. Smith and S. Schuler, a Copartnership, and H. C. Fursman, W. Huff, R. Waymire, P. Perkins, H. A. Baker, E. Thompson, D. Smith and S. Schuler,

as Individuals, Defendants," and numbered 50,723 in the files and records of the said Superior Court; that in his verified complaint in said suit the said W. W. Colquhoun alleges that C. J. and E. E. Teagle assigned to him the said claims sued upon in said action; he further alleges that during the years 1911 and 1912 the said C. J. and E. E. Teagle furnished certain goods, wares and merchandise of the value of \$750.00 to defendants therein, including this plaintiff, and that no part of said sum had been paid; that plaintiff herein alleges the fact to be that said suit was brought by plaintiff for the value of the said goods, wares and merchandise claimed to have been sold and delivered by plaintiff's assignors to Thos. W. Pack in the years 1911 and 1912, and it is claimed that the same were used by a camp of men doing assessment work upon the claims hereinabove described, together with other placer mining claims, during the years 1911 and 1912; that the whole amount of the value of said goods, so alleged to have been sold was \$969.00, but that the said plaintiff in said suit admitted the payment of the sum of \$219.00 on account. That thereafter and on or about the 27th day of October, 1913, R. [18] Waymire filed his verified answer to the complaint in said action; that thereafter a trial was had of the issues therein, and after judgment had been entered against R. Waymire, the said Court on the 11th day of August, 1914, granted the motion of R. Waymire for a new trial thereof; that plaintiff in said suit, as this plaintiff is informed and believes, is now prosecuting an appeal from the order of said Court granting the said



motion for a new trial. That plaintiff alleges upon his information and belief that the said sum of \$750.00 sued for in said action, and the sum of \$219.00 admitted to have been paid on account therein, constitute part of the amount the said defendants in this suit claim in their said pretended Notice of Forfeiture (Exhibit "A") to have been paid by the said Thos. W. Pack in the year 1911 for doing the assessment work on the above described placer mining claims, and for the pretended payment of which by the said Pack, the said defendants are now seeking contribution from this plaintiff, and threatening a forfeiture of his rights and interests in and to said above described claims upon his failure to so contribute, as recited in their said pretended Notice of Forfeiture.

## XII.

That on the 30th day of August, 1913, one M. A. Varney, by his attorneys, Joseph K. Hutchinson, one of the defendants herein, and Walter Slack filed a suit in the Superior Court of the City and County of San Francisco, State of California, against H. C. Fursman, W. Huff, P. Perkins, H. A. Baker, R. Waymire, D. Smith, S. Schuler and this plaintiff, which said suit is entitled in said Superior Court, "M. A. Varney, Plaintiff, vs. H. C. Fursman, W. Huff, R. Waymire, P. Perkins, H. A. Baker, E. Thompson, D. Smith and S. Schuler, a Copartnership, and H. C. Fursman, W. Huff, R. Waymire, P. Perkins, H. A. Baker, E. Thompson, D. Smith and S. Schuler, as Individuals, Defendants," and numbered 50,724 in the files and records of the said Su-

perior Court; that in the verified complaint in said suit the plaintiff therein, the said M. A. Varney, alleged that during the years 1911 and 1912 he furnished supplies and [19] rendered services to the defendants therein in the sum of \$4,170.00, of which said sum only \$500.00 has been paid; that plaintiff alleges the fact to be that the said action was brought by the said M. A. Varney to recover the sum of \$3,670.00 from the said defendants for the use of two certain automobiles and certain supplies furnished by the said M. A. Varney to the said Pack at his special instance and request, in the years 1911 and 1912 and used by the said Pack to transport men and supplies from the City of Los Angeles and elsewhere to the above described claims on Searles Borax Lake, San Bernardino County, California.

That thereafter and on or about the 20th day of October, 1913, R. Waymire filed his verified answer to the Complaint in said action; that thereafter various proceedings were had therein and a trial thereof was had before the Court, and that on or about the 16th day of July, 1914, R. Waymire moved the Court for a nonsuit in said action, which motion for nonsuit was by the Court granted; that on or about the 7th day of October, 1914, judgment was entered in favor of R. Waymire, which said judgment is now of record in the office of the Clerk of said Superior Court in Volume 77 of Judgments at page 93 thereof. That this plaintiff alleges upon his information and belief that the said sum of \$3,670.00, sued for in said action, and the sum of \$500.00 alleged to have been paid on account therein, constitute

part of the amount the said defendants in this suit claim in their said pretended Notice of Forfeiture (Exhibit "A") to have been paid by the said Thos. W. Pack in the year 1911 for doing the assessment work on the above described placer mining claims, and for the pretended payment of which, by the said Pack, the said defendants are now seeking contribution from this plaintiff and threatening to forfeit all of plaintiff's rights, title and interest in and to said placer mining claims, if he does not so contribute, as recited in their said pretended Notice of Forfeiture (Exhibit "A.") [20]

## XIII.

That on or about the 26th day of February, 1914, one Raphael Mojica filed an action in the Superior Court in the City and County of San Francisco, State of California, against this plaintiff, his collocators and defendant S. Schuler, as assignee of the defendant Pack, one Henry E. Lee and various other parties to recover the sum of \$1,443.50, which said action is entitled "Raphael Mojica, Plaintiff, vs. H. C. Fursman, W. Huff, R. Waymire, P. Perkins, H. A. Baker, E. Thompson, D. Smith, T. W. Pack, a co-partnership, H. C. Fursman, W. Huff, R. Waymire, P. Perkins, H. A. Baker, E. Thompson, D. Smith, T. W. Pack, an association, and Henry E. Lee, Thomas O. Toland, H. C. Fursman, W. Huff, Rudolph Waymire, P. Perkins, H. A. Baker, E. Thompson, Dudley Smith, Stella Schuler, John Doe, Jane Roe, Richard Roe and Mary Roe, Defendants," and is numbered 54,989 in the files and records of said Superior Court; that in his verified complaint in said action the said

plaintiff pretends to be the assignee of thirty certain Mexican laborers, and pretends therein that each of these said Mexican laborers named therein had assigned to him their claims against the defendants therein for doing certain labor and work, in and upon the above described placer claims by way of assessment work thereon, during the year 1912; that said action is now at issue in said Superior Court; that plaintiff is informed and believes and therefore alleges the fact to be that the said sum of \$1,443.50 sued for in said action constitutes a portion of the amount the said defendants in this suit claim in their said pretended Notice of Forfeiture Exhibit ("A") to have been paid by the said Thos. W. Pack in the year 1911 for doing the assessment work on the above described placer mining claims and for the pretended payment of which the said defendants are now seeking contribution from this plaintiff, and threatening to forfeit all of plaintiff's right, title and interest in and to said placer mining claims if he does not so contribute, as recited in their said pretended Notice of Forfeiture (Exhibit "A"); that plaintiff is informed and believes that no part of said sum of \$1,443.50 sued for in said action has been paid by the said Thos. [21] W. Pack, or by anyone whomsoever for him.

#### XIV.

That a short time prior to the dates when the said defendant Thos. W. Pack claims to have expended money for the purpose of doing assessment work on the above described placer mining claims, as claimed in defendants' pretended Notice of Forfeiture (Ex-

hibit "A"), one Henry E. Lee, as the duly authorized agent and representative of this plaintiff, and of his co-locators, paid to the said defendant, Thos. W. Pack, for this plaintiff, and for his said co-locators in their respective proportionate shares, the sum of \$1,000.00, as a portion of their *pro rata* contribution for the doing of said actual assessment work for the years 1911 and 1912 upon said claims, and for the purpose of being applied toward and used in said actual assessment work thereon; that as plaintiff is informed and believes the said Thos. W. Pack, did so use the said sum of \$1,000.00 for said purpose in said year and that the said amount should be credited to this plaintiff and his co-locators in proportion to their respective interests in the said placer mining claims.

## XV.

That plaintiff further alleges that during the year 1911, and prior to the time any money is claimed to have been expended by the said defendant Pack in his said pretended Notice of Forfeiture (Exhibit "A"), the said defendant Pack duly acknowledged in writing that he was indebted to one Henry E. Lee, the duly authorized agent of plaintiff, and his co-locators, in the sum of \$1,836.00, and that the said Henry E. Lee, acting as such agent for plaintiff and his co-locators, directed the said defendant Pack to use and utilize all of said money, or so much thereof as might be necessary, in the annual representation of the placer mining claims hereinabove described in said pretended Notice of Forfeiture (Exhibit "A") for the years 1911 and 1912, and that the said defend-



ant Pack agreed with the said Henry E. Lee that he would so utilize and use said money; that plaintiff claims [22] that said sum of \$1,836.00 is and should be a portion of the money expended by the said defendant Pack, as described in the said pretended Notice of Forfeiture Exhibit ("A"); that the said money and indebtedness was money due and owing to this plaintiff and his co-locators from the said defendant Pack, duly evidenced by his written acknowledgment of such indebtedness to the said Henry E. Lee, the duly authorized agent of this plaintiff and his co-locators, and that said amount should be credited to this plaintiff and his co-locators in proportion to their respective interests in their said placer mining claims.

#### XVI.

Plaintiff further alleges that simultaneously with the service of said pretended Notice of Forfeiture (Exhibit "A") upon plaintiff, the said defendants served upon plaintiff another pretended Notice of Forfeiture, by the terms of which the said defendants claim that the defendant Pack expended during the years 1911 and 1912, the sum of \$5,600.00 for labor and improvements upon one hundred and seventy-five placer claims, among which are included the placer claims in said Exhibit "A," and hereinbefore in this complaint described; that by the terms of said pretended Notice of Forfeiture, so served upon plaintiff simultaneously with the service of said Exhibit "A," as aforesaid, the said defendants claim contribution from this plaintiff twice for the same money and twice for the representation of the placer

claims in this complaint specifically described.

### XVII.

Plaintiff has no means of knowing or of ascertaining what, if any, amount of his own money or funds said defendant has expended on said placer mining claims, or upon any of them, for annual representation work for the year 1911, and that the only method whereby plaintiff can procure said information is through this Court and by its order compelling the defendant, Thos. W. Pack, [23] to account for and disclose any and all moneys expended or spent by him upon said placer mining claims, above described, or upon any of them, during the year 1911, for the purpose of representing same, and each and all thereof, for said year, if any money at all was so expended by the said Thos. W. Pack for such purpose, and whose money, if any, was expended by him, how expended, and what amount of the same, if any, was so expended and spent for labor and improvements, or labor or improvements upon the above described claims, or upon any of them, which could lawfully be counted, considered or applied as such representation work, and for the expenditure of which he would be entitled to *pro rata* contribution from this plaintiff.

### XVIII.

Plaintiff hereby and herewith offers and stands ready to pay to the said Thos. W. Pack, or these defendants, or either of them, his proportionate share of any moneys belonging to the said defendant Thos. W. Pack which this Court finds were expended by the said Thos. W. Pack on the above described

claims, or any of them, as actual representation work thereon for the year 1911, if the Court finds he so expended any money at all for such purpose.

### XIX.

That plaintiff further alleges that if the said defendants are allowed to proceed under said pretended Notice of Forfeiture (Exhibit "A") they will, at the expiration of ninety days from and after the date of the service of the said pretended Notice of Forfeiture, file and record a copy of said Notice of Forfeiture (Exhibit "A") and an affidavit of service, with the County Recorder of San Bernardino County, California, and claim and assert that all the right, title and interest of this plaintiff in and to said placer claims, and each and all thereof, has been duly and legally forfeited and extinguished and thereby and by means thereof a cloud will be cast upon the title and interest of this [24] plaintiff in and to said placer mining claims, and each of them, and plaintiff be compelled to institute and prosecute a great number of suits to remove said cloud, at a great and exorbitant expense; that unless defendants are enjoined and restrained from proceeding to declare the forfeiture of plaintiff's rights in and to said placer claims and each of them as claimed in their said Notice of Forfeiture (Exhibit "A") this plaintiff will be compelled to institute, prosecute and maintain a multiplicity of suits in order to remove the cloud cast upon his said title and interest in and to each of said placer mining claims.

### XX.

That plaintiff has no plain, speedy or adequate



remedy at law in the premises, and unless defendants, and each of them, are restrained and enjoined from declaring a forfeiture of all of plaintiff's right, title and interest in and to said claims, and each thereof, pursuant to and in accordance with the pretended Notice of Forfeiture (Exhibit "A"), plaintiff will be irrevocably and irreparably damaged and injured, and be defrauded or deprived of all of his right, title and interest in and to said placer mining claims, and each of them.

WHEREFORE, plaintiff prays:

1. For a decree of this Court preventing any forfeiture of any right, title, interest or claim of this plaintiff in and to said placer mining claims above described, and in and to each and all of them.

2. For a decree of this Court directing said defendants, and each of them, to account and disclose to this plaintiff, and to this Court, for all moneys, if any, belonging to the said Pack and constituting his own personal funds, and used and expended by him in procuring labor or improvements, or labor and improvements, which could be legally counted, considered or claimed as a representation or annual assessment work for the year 1911, on the above [25] described placer mining claims, and on each of them, and that this Court ascertain and determine the amount, if any, thereof, and the proportion, if any, which this plaintiff should pay.

3. That these defendants, and each of them, their agents, attorneys, servants and employees be permanently restrained and enjoined from taking any steps to perfect or establish any forfeiture of plain-

tiff's rights, titles and interests in or to said placer mining claims, hereinabove described, or in or to any part or portion thereof, or any of them, and that in the meantime during the pendency of this suit, and until the final determination thereof on the merits, said defendants, and each of them, their attorneys, agents, servants, representatives or employees, and each and all of them, be restrained and enjoined from taking any steps to cast a cloud upon the title, or to forfeit or to perfect or establish any forfeiture of plaintiff's rights, titles or interests in or to said placer mining claims hereinabove described, or any part or portion thereof, or any of them.

4. For plaintiff's costs of suit.

5. For such other and further relief as this Honorable Court may deem just and equitable in the premises.

H. L. CLAYBERG.

CLAYBERG & WHITMORE,

Attorneys for Plaintiff. [26]

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*In the District Court of the United States, Southern  
District of California.*

E. THOMPSON,

Complainant.

vs.

THOMAS W. PACK, STELLA SCHULER and  
JOSEPH K. HUTCHINSON,

Defendants.

State of California,  
City and County of San Francisco,—ss.

Henry E. Lee, being first duly sworn upon his oath  
says:

That he has read the complaint in the above-entitled action, to which this affidavit is attached, and knows the contents thereof; that he has personal knowledge of all the facts and matters therein alleged, and knows them to be true except as to those matters therein alleged upon information and belief, and as to them, he believes them to be true.

That he makes this affidavit for the plaintiff and on his behalf, for the reason that the said plaintiff is now a resident of the City and County of San Francisco, State of California, and is not at the date of the making of this affidavit within said State of California, or within the City and County of San Francisco, wherein this affiant resides and has his office and place of business.

HENRY E. LEE,

Subscribed and sworn to before me this 21st day of  
November, 1914.

[Seal]

H. B. DENSON,

Notary Public in and for the City and County of San  
Francisco, State of California. [27]

**Exhibit "A" [to Bill in Equity].**

**NOTICE OF FORFEITURE.**

710 Claus Spreckles Building,

San Francisco, California, September 14th, 1914.

E. Thompson:

You are hereby notified that I, the undersigned, T. W. PACK, expended during the year 1911 the sum of Twelve Hundred Dollars (\$1200), in amounts of One Hundred Dollars (\$100), for labor and improvements, upon each of the twelve (12) following described placer mining claims:

Those certain placer mining claims situate in and upon Searles Borax Lake, County of San Bernardino, State of California, more particularly named and numbered as follows:

“The Soda No. 68 Placer Mining Claim,” the location notice of which said claim is recorded in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 164 of said volume;

“The Soda No. 69 Placer Mining Claim,” the location notice of which said claim is recorded in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 156 of said volume;

“The Soda No. 70 Placer Mining Claim,” the location notice of which said claim is recorded in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 165 of said volume;

“The Soda No. 71 Placer Mining Claim,” the location notice of which said claim is recorded in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 166 of said volume;

“The Soda No. 72 Placer Mining Claim,” the location notice [28] of which said claim is recorded

in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 166 of said volume;

“The Soda No. 87 Placer Mining Claim,” the location notice of which said claim is recorded in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 174 of said volume;

“The Soda No. 88 Placer Mining Claim,” the location notice of which said claim is recorded in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 174 of said volume;

“The Soda No. 89 Placer Mining Claim,” the location notice of which said claim is recorded in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 175 of said volume;

“The Soda No. 90 Placer Mining Claim,” the location notice of which said claim is recorded in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 175 of said volume;

“The Soda No. 91 Placer Mining Claim,” the location notice of which said claim is recorded in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 176 of said volume;

“The Soda No. 111 Placer Mining Claim,” the location notice of which said claim is recorded in Volume 82 of Mining Records, in said County of San



Bernardino, State of California, at page number 186 of said volume;

“The Soda No. 112 Placer Mining Claim,” the location notice of which said claim is recorded in Volume 82 of Mining Records, in said County of San Bernardino, State of California, at page number 186 of said volume;

You are hereby further notified that said sum of \$1200 (being \$100 for each of said claims) was expended by me for the [29] purpose of complying with the requirements of Section 2324 of the Revised Statutes of the United States and amendments thereof, concerning the performance of annual labor upon mining claims.

You are hereby further notified that the amount of \$100 was the amount required to hold each of said claims for the said year of ending December 31st, 1911, and that said sum of \$1200 was the aggregate amount required to hold said twelve claims for said year 1911.

You are hereby further notified that throughout said year 1911, I was the owner of an undivided one-eighth interest in said claims and therefore a co-owner with you throughout said period, during which you also were the owner of an undivided one-eighth interest in said claims.

You are hereby further notified that subsequent to the making of said expenditures I transferred my said one-eighth interest to S. Schuler, and that she has transferred said one-eighth interest to Joseph K. Hutchinson, who is now the owner thereof.

You are hereby further notified that I, T. W. Pack,

together with said S. Schuler, and said Joseph K. Hutchinson, also undersigned, have received no contribution from you for your proportion, to wit: one-eighth, of said expenditures, do, and each of us does hereby make demand upon you for contribution by you of your proportion of said expenditures, to wit: of the sum of \$150, or one-eighth of said sum of \$1200.

You are hereby further notified that if, within ninety (90) days from the personal service of this notice upon you, you fail or refuse to contribute your proportion of said expenditures, to wit: \$150, or one-eighth of said sum of \$1200, by payment of the same to said Joseph K. Hutchinson, at Room 710, Claus Spreckles Building, City and County of San Francisco, State of California, he being duly authorized to collect said money and receipt for the same, your said interest in said mining claims, and each of them [30] will become the property of the undersigned.

Dated, San Francisco, California, September 14, 1914.

(Signed)            S. SCHULER,  
                          T. W. PACK,  
                          JOSEPH K. HUTCHINSON,

[Endorsed]: No. B. 50—Eq. U. S. District Court, Southern District of California, Southern Division. In equity. E. Thompson, vs. Thomas W. Pack, Stella Schuler, Joseph K. Hutchinson. Bill in Equity. Filed Nov. 24, 1914. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. H. L. Clayberg, Clayberg & Whitmore, 937 Pacific Build-

ing, San Francisco, Attorneys for Complainant.  
[31]

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*In the District Court of the United States, Southern  
District of California, Southern Division.*

E. THOMPSON,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and  
JOSEPH K. HUTCHINSON,

Defendants,

**Restraining Order and Order to Show Cause.**

WHEREAS, plaintiff above named has filed his verified bill in equity in the above-entitled cause against the defendants above named praying for certain equitable relief and an order of this Court restraining and enjoining defendants and each of them, during the pendency of this suit and until the final determination thereof upon its merits, from in any way or manner casting a cloud upon the title of or taking any steps toward forfeiting or declaring forfeited any of plaintiff's right, title or interest in and to certain placer mining claims in said bill of complaint and hereinafter fully described, named and numbered; and

WHEREAS, upon a reading of plaintiff's said bill of complaint it satisfactorily appears to the Court therefrom that plaintiff may suffer irreparable and irrevocable damage and injury; before the hearing of the order to show cause hereinafter set forth, unless,



pending the hearing on said order to show cause, said defendants and each of them are by this Court restrained as hereinafter set forth, and other good cause appearing. [32]

NOW THEREFORE, IT IS HEREBY ORDERED that you, the said defendants, Thos. W. Pack, S. Schuler and Jos. K. Hutchinson, and each of you, your and each of your attorneys, agents, servants and employees are hereby specially restrained and enjoined from in any way or maner taking any steps toward forfeiting or declaring a forfeiture of plaintiff's right, title and interest in and to certain hereinafter described placer mining claims, and each of them, pursuant to or in accordance with your pretended Notice of Forfeiture heretofore, and within ninety days prior to the date hereof, served upon plaintiff herein, a copy of which is attached to the said bill of complaint and marked Exhibit "A," until the hearing of the application of plaintiff for an injunction *pendente lite* in this cause, which said application is hereby set for hearing before this Court on the 7th day of December, 1914, or until the further order of this Court;

IT IS FURTHER ORDERED that you and each of you appear before this Court at 10:30 o'clock A. M. on the 7th day of December, 1914, at the courtroom of Division No. 2 of the District Court of the United States for the Southern District of California, in the Federal Building, in the City of Los Angeles, County of Los Angeles, State of California, and then and there to show cause, if any you have, why said

restraining order, as hereinabove made, should not be made permanent during the pendency of this suit and until the final determination thereof on its merits.

Said placer mining claims above-named are described, numbered and named as follows, being situate on Searles Borax Lake, County of San Bernardino, State of California, the location notices of which said placer claims are recorded in Volume 82 of Mining Records in the office of the County Recorder of the said County of San Bernardino, State of California, at the following respective pages of said Volume 82 set down opposite and following the hereinafter [33] described, named and numbered placer mining claims:

"The Soda No. 68 Placer Mining Claim," at page 164 thereof;

"The Soda No. 69 Placer Mining Claim," at page 165 thereof;

"The Soda No. 70 Placer Mining Claim," at page 165 thereof;

"The Soda No. 71 Placer Mining Claim," at page 166 thereof;

"The Soda No. 72 Placer Mining Claim," at page 166 thereof;

"The Soda No. 87 Placer Mining Claim," at page 174 thereof;

"The Soda No. 88 Placer Mining Claim," at page 174 thereof;

"The Soda No. 89 Placer Mining Claim," at page 175 thereof;

"The Soda No. 90 Placer Mining Claim," at page 175 thereof;

"The Soda No. 91 Placer Mining Claim," at page 176 thereof;

"The Soda No. 111 Placer Mining Claim," at page 186 thereof;

"The Soda No. 112 Placer Mining Claim," at page 186 thereof;

Dated this 24th day of November, 1914.

BENJAMIN F. BLEDSOE,

Judge. [34]

[Indorsed]: No. B. 50—Eq. U. S. District Court, Southern District California, Southern Division. In equity. E. Thompson, vs. Thomas W. Pack,

Stella Schuler, Joseph K. Hutchinson. Restraining Order and Order to Show Cause. Filed Nov. 24, 1914. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. H. L. Clayberg, Clayberg & Whitmore, 937 Pacific Building, San Francisco, Attorneys for Complainant. Eq. O Bk.— [35]

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**[Order Continuing Hearing to December 8, 1914.]**

At a stated term, to wit, the July Term, A. D., 1914, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the City of Los Angeles, on Monday, the seventh day of December, in the year of our Lord, one thousand nine hundred and fourteen. Present: The Honorable Benjamin F. Bledsoe, District Judge.

No. B. 50—EQUITY.

E. THOMPSON,

Complainant,

vs.

THOMAS W. PACK, et al.,

Defendants,

This cause coming on this day to be heard under and pursuant to the order heretofore made and entered herein that defendants show cause why an injunction *pendente lite* should not be issued herein, pursuant to the prayer of the bill of complaint; A. V. Andrews, Esq., appearing as counsel for complainant; Charles W. Slack, Esq., appearing as counsel for defendants; it is ordered that this cause be, and the

same hereby is continued until Tuesday, the 8th day of December, 1914, at 10:30 o'clock, A. M., for said hearing. [36]

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**[Order Submitting Application for Preliminary  
Injunction, etc.]**

At a stated term, to wit, the July Term, A. D. 1914, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Tuesday, the eighth day of December, in the year of our Lord, one thousand nine hundred and fourteen. Present: The Honorable BENJAMIN F. BLEDSOE, District Judge.

No. B. 50—EQUITY.

E. THOMPSON,

Complainant,

vs.

THOMAS W. PACK et al.,

Defendants.

This cause having come on this day to be heard under and pursuant to the order heretofore made and entered herein that defendants show cause why an injunction *pendente lite* should not be issued herein, pursuant to the prayer of the bill of complaint; A. V. Andrews, Esq., appearing as counsel for complainant; Charles W. Slack, Esq., appearing as counsel for defendants; and said application for a preliminary injunction having been argued, in connection with the argument of the application for a prelim-

inary injunction in cause No. B. 46—Equity, E. Thompson, Complainant, vs. Thomas W. Pack, et al., Defendants, by Charles W. Slack, Esq., of counsel for defendants, and by A. V. Andrews, Esq., of counsel for complainant; it was ordered that this cause be, and the same thereby was submitted to the Court for its consideration and decision on complainant's application for a preliminary injunction and the argument thereof. [37].

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**[Order Granting Application for Temporary Injunction, etc.]**

At a stated term, to wit, the July Term, A. D. 1914, of the District Court of the United States of America, in and for the Southern District of of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Friday, the eleventh day of December, in the year of our Lord, one thousand nine hundred and fourteen. Present: The Honorable BENJAMIN F. BLEDSOE, District Judge.

No. B. 50—EQUITY.

E. THOMPSON,

Complainant,

vs.

THOMAS W. PACK et al.,

Defendants.

This cause having heretofore been submitted to the Court for its consideration and decision under and pursuant to the order heretofore made and en-



tered herein that defendants show cause why an injunction *pendente lite* should not be issued herein, pursuant to the prayer of the bill of complaint; and the Court having duly considered the same, and being fully advised in the premises, now, in accordance with the conclusions of the Court expressed in its opinion this day filed in cause No. B. 46—Equity, E. Thompson, Complainant, vs. Thomas W. Pack, et al., Defendants, it is ordered that complainant's application for said temporary injunction be, and the same hereby is granted, counsel for complainant to prepare and present a suitable order in accordance herewith. [38]

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[Opinion.]

*In the District Court of the United States in and for  
the Southern District of California.*

C. THOMPSON,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and  
JOSEPH K. HUTCHINSON,

Defendants.

This matter is before the Court on an order to show cause why a temporary injunction *pendente lite* should not issue restraining the defendants from putting of record certain Notices of forfeiture with Affidavits of Service thereof; such notices being those provided in Section 2324 Revised Statutes of the United States, and Section 1426-o of the Civil Code of the State of California, with reference to

forfeiting of part interests of mining claims.

The bill in equity as filed contains much matter that seems to be immaterial, much that is purely "epithetic," to use an expressive phrase, and a great deal averred upon information and belief, and not positively. With respect to this latter, the Court feels that it should not, of course, consider it upon this order to show cause, because of the fact that under the law the complainant, to be entitled to positive relief at this juncture, and in advance of a hearing, must base his request for such relief upon positive allegations. Laying out of consideration, however, the matters referred to above, it may be said, that certain facts are stated with such positiveness and cogency as that they fall within the realm of indispute upon this hearing. Briefly summarized, they are: That the plaintiff in the year nineteen hundred and ten, in conjunction with the defendant Pack, and certain other individuals mentioned, located and recorded [39] one hundred and seventy-five certain placer mining claims, situate in the County of San Bernardino, State of California; that plaintiff is now, and ever since the day of said location, has been the owner and holder of a one-eighth undivided interest in and to the said placer mining claims, and each of them; that during the month of September, in the year nineteen hundred and fourteen, the defendant herein, caused to be served upon plaintiff a certain notice of forfeiture, set out in the bill of complaint, and by which it was sought, pursuant to the sections of the Revised Statutes and Civil Code above referred to, to forfeit the

title of plaintiff in and to each and all of the one hundred seventy-five (175) described placer mining claims heretofore referred to; that said notice contained the appropriate statements that unless plaintiff, within ninety days after the service of the same upon him, paid to the defendants, or to the defendant Joseph K. Hutchinson, for said defendants, the sum of seven hundred dollars (\$700), claimed to be one-eighth of the total amount of money claimed to have been expended by said defendant Pack, upon said claims, in the years nineteen hundred and eleven (1911) and nineteen hundred twelve (1912), that the interest of plaintiff would become forfeited to the said Joseph K. Hutchinson; plaintiff then alleges that the said Pack did not expend, or cause to be expended, of his own money, during the years nineteen hundred and eleven (1911) and nineteen hundred and twelve (1912), or at any other time, the sum of fifty-six hundred dollars (\$5600), of which the said seven hundred dollars (\$700) was the one-eighth part, upon or for, the benefit of said placer mining claims, or at all; that at least twenty-eight hundred and thirty-six (\$2836) was contributed by plaintiff and his co-locators to the defendant Pack, for the purpose of doing the assessment work upon the claims mentioned, for the years nineteen [40] hundred and eleven (1911) and nineteen hundred and twelve (1912); plaintiff further alleges that whatever title or interest the said Hutchinson obtained or holds in and to the said claims, was obtained and is held for the sole use and benefit of the Foreign Mines and Development Company, and the American

Trona Company and the California Trona Company. It is also alleged that in the year nineteen hundred and twelve (1912) while plaintiff and his co-locators were engaged in the performance of the annual assessment work upon said claims they were forcibly prevented from completing the said assessment work, and were forcibly ejected and driven from said claims, by the said Foreign Mines and Development Company, the American Trona Company and the California Trona Company.

If these facts thus alleged be true, and at this time the Court must assume them to be true, because no affidavit or answer in opposition to or in explanation of them, has been presented by the defendants, then it would appear that the defendants have no right to claim or exact a forfeiture, as against the plaintiff, for his failure to contribute his share of the assessment work, and that the proceedings on the part of defendants, leading up to the service of the notice of forfeiture, and in the recording thereof, are substantially a nullity, in so far as they seem to have effected a divestiture of plaintiff's undivided interest in and to the mining property in question. On such a state of facts I apprehend the Court, after an accounting or other appropriate investigation, would make a decree determinative of the rights of the parties and the protection thereof. This decree, under the case as made by the facts to be taken as true, would, in its substantial aspects, be in favor of the plaintiffs. The only question for determination, then, is whether or not the plaintiff should be protected in his rights, pending such final determination

by the Court, and whether or not the strong arm of the Court should be employed at this time to enjoin the [41] defendants from placing of record, that which plaintiff claims would constitute a cloud upon his title, to wit: The notice of forfeiture with the affidavit of service thereof. That it would constitute such a cloud, I think, is indisputably clear. It was held in *Pixley vs. Huggins*, 15 Cal. 128, that the true test as to whether or not a certain instrument would cast a cloud upon the title, upon the plaintiff's property, was this: "Would the owner of the property, in an action of ejectment brought by the adverse party, founded upon the deed be required to offer evidence to defend a recovery? If such proof would be necessary the cloud would exist; if the proof would be unnecessary no shade would be cast by the presence of the deed." This decision has been cited frequently, and I apprehend states the law concisely. In this case it is apparent that the filing of the notice and affidavit of service, would *prima facie* serve to divest plaintiff of his interest in the properties and that it would require extrinsic evidence on his part to defeat a suit of ejectment, based upon the forfeiture apparently evidenced by the notice of labor done and failure to contribute thereto. For these reasons I am constrained to hold that plaintiff has presented a *prima facie* case, free from colorable doubt, is entitled to a temporary injunction *pendente lite*.

Plaintiff's counsel will draft an appropriate order.

BENJAMIN F. BLEDSOE,

Judge.



[Endorsed]: No. B. 46—Eq. United States District Court, Southern District of California, Southern Division. C. Thompson, vs. Thomas W. Pack et al. Opinion re Injunction *Pendente Lite*. Filed December 11, 1914. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. [42]

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**[Order for Injunction Pendente Lite.]**

*District Court of the United States, Southern District of California.*

B. 50—EQUITY.

E. THOMPSON,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and  
JOSEPH K. HUTCHINSON,

Defendants.

On return of the order to show cause made by me in the above-entitled action on the 24th day of November, 1914, and returnable on the 7th day of December, 1914, and this cause coming on regularly for hearing on the return day thereof, upon the verified bill of complaint. After hearing Messrs. Clayberg & Whitmore for the complainants, and Messrs. Charles W. Slack and Joseph K. Hutchinson, for the defendants, and no sufficient cause to the contrary being shown:

IT IS ORDERED that the said order to show cause be, and the same hereby is made absolute until the final determination of this suit. It is further

Ordered, that you, the said defendants, Thomas W. Pack, Stella Schuler and Joseph K. Hutchinson, and each of you, your and each of your attorneys, agents, servants and employees, are hereby specifically restrained and enjoined from in any way or manner taking any steps towards forfeiting or declaring a forfeiture of plaintiff's right, title and interest in, and to those certain placer mining claims named and described in the Bill of Complaint filed herein and each of them, pursuant to or in accordance with your pretended Notice of Forfeiture heretofore, and within ninety days prior to the date of the commencement of this suit served upon plaintiff herein, until the final hearing and termination of this suit or until the further order of this court.

The clerk will issue the Writs accordingly.

Dated this 11th day of December, 1914.

BENJAMIN F. BLEDSOE,  
Judge of said District Court. [43]

[Indorsed]: "No. B. 50—Eq. In the District Court of the United States in and for the Southern District of California, Southern Division. E. Thompson, Complainant, vs. Thomas W. Pack et al., Defendants. Order for Injunction *Pendente Lite*. Filed Dec. 15, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Clayberg & Whitmore, Attorneys for Dfts. Eq. Order Book." [44]

*In the District Court of the United States, Southern  
District of California.*

E. THOMPSON,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and  
JOSEPH K. HUTCHINSON,

Defendants.

**Notice of Motion for Order Vacating Order for  
Injunction Pendente Lite and Dissolving  
Injunction Pendente Lite.**

To E. Thompson, Complainant above named, and to  
Messrs. H. L. Clayberg and Clayberg & Whit-  
more, His Attorneys;

You and each of you will please take notice, that  
on Saturday, the 19th day of December, 1914, at the  
hour of 10:30 o'clock A. M., or as soon thereafter as  
counsel can be heard at the courtroom of the above-  
entitled court, Southern Division thereof, in the Fed-  
eral Building, in the city of Los Angeles, County of  
Los Angeles, State of California, defendants above  
named will move said Court for an order vacating the  
order granting an injunction *pendente lite* in the  
above-entitled cause, heretofore and on the 11th day  
of December, 1914, given, made and entered in the  
above-entitled cause, and for a further order dissolv-  
ing the injunction *pendente lite* issued pursuant  
thereto.

Said motion will be made upon the following  
grounds:

1. That the allegations of the complainant's bill on file in the above-entitled cause, taken in connection with the allegations contained in the affidavits hereinafter mentioned and served herewith show that complainant is not entitled to the order granting said injunction *pendente lite*.

2. That the above-entitled cause does not present a case for the [45] making of said order for an injunction *pendente lite*.

3. That defendants, and each of them, will be irreparably injured if said order is not vacated and said injunction dissolved.

4. That said order does not provide for any security for defendants' costs and damages and it appears from the affidavits served herewith that complainant is financially irresponsible.

Said motion will be made upon the affidavits of Joseph K. Hutchinson, Stella Schuler and Thomas W. Pack, the defendants above named, served and filed herewith, and upon all the records, papers, proceedings and files in the above-entitled action, and upon this Notice of Motion and upon oral testimony to be adduced at the hearing of said motion.

Dated, Los Angeles, Cal., December 14th, 1914.

JOSEPH K. HUTCHINSON,  
Attorney for Defendants.

[Indorsed]: Original. No. B. 50—Eq. United States District Court, Southern District of California, Southern Division. E. Thompson, Complainant, vs. Thos. W. Pack et al., Defendants. Filed Dec. 14, 1914. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Notice of Motion to Vacate

Order for Injunction *Pendente Lite*. Pursuant to Rule 49. E. L. Ball, Attorney at Law, 737 Consolidated Realty Bldg., Los Angeles, Cal., is hereby designated as the person on whom to serve papers in this cause. Joseph K. Hutchinson, Attorney for Defendants, San Francisco, Cal. [46]

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*In the District Court of the United States, Southern  
District of California.*

E. THOMPSON,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and  
JOSEPH K. HUTCHINSON,

Defendants.

**Affidavit of Joseph K. Hutchinson [on Motion to  
Vacate Order for Injunction Pendente Lite.]**

State of California,

County of Los Angeles,—ss.

JOSEPH K. HUTCHINSON, being first duly sworn, deposes and says:

That he is, and at all the times herein mentioned, was a white male citizen of the United States, and a resident and citizen of the State of California, over the age of twenty-one years, and one of the defendants in the above-entitled cause; that the interests of affiant in the subject matter of said cause are joint with and inseparable from the like interests of the other two defendants in said cause; that affiant makes this affidavit for and on behalf of each and all



of the said defendants above named, including affiant;

That affiant has read the Bill of Complaint on file in said cause, and knows the contents thereof, and each and every allegation therein contained;

That heretofore, and on or about, to wit; the 14th day of January, 1914, S. Schuler, one of the defendants above named, made, executed, acknowledged and delivered to affiant her certain grant, bargain and sale deed conveying to affiant all the right, title, and interest, to wit, an undivided one-eighth interest, of the said defendant [47] Schuler in and to the 175 placer mining claims referred to in Section I of the said Bill of Complaint on file herein, said 175 placer mining claims being situate in and upon Searles Borax Lake in the county of San Bernardino, State of California; that thereafter, and in said month of January, 1914, said deed was duly recorded in the office of the County Recorder of said County of San Bernardino; that at the time the said defendant Schuler conveyed her said interest in said placer mining claims to affiant the said interest so conveyed stood upon the records of the County Recorder in and for the said county of San Bernardino in the name of the said defendant Schuler, and had so stood in her name for more than one year prior to the date of said transfer; that affiant knew at the time of the said conveyance by the said Schuler to him, and had known for a long time thereto, that the said interest of the said Schuler so stood upon the records of the County Recorder of the county of San Bernardino, in the name of the said Schuler, without

any cloud upon or encumbrance against said interest appearing upon the face of the said records; that affiant relied upon his said knowledge of said records in purchasing said interest from said Schuler, and, pursuant thereto, in taking said deed and conveyance; that at the time of the said conveyance by the said Schuler to affiant, affiant had no knowledge, notice or belief of whatsoever kind or nature of the existence of any claims, rights or equities of whatsoever kind or nature against or related to in any way whatsoever the said interest of the said Schuler, and owned, held or claimed by persons other than the said Schuler; that at the time of the said conveyance by the said Schuler to affiant, affiant did not know nor did he have any knowledge, notice or belief of whatsoever kind or nature, of the existence of the deed and conveyance referred to in Section V of the Bill of Complaint on file herein from the said Schuler as grantor to one J. A. Shellito, as grantee, whereby the said Schuler transferred and conveyed to the said Shellito all of her right, title and interest in and to said notice or belief of whatsoever [48] kind or nature as to the fact, referred to in Section V of the said Bill of Complaint, that the said Schuler had on the 25th day of December, 1913, or at any other time, made, executed, acknowledged and delivered her deed and conveyance to the said Shellito, or had made, executed, acknowledged and delivered any other deed, or made any other transfer to any other person whomsoever; that affiant took said conveyance from said Schuler as an innocent purchaser and wholly without notice of already existing rights, claims or

equities against the interest so conveyed by Schuler to affiant, belonging to said Shellito or anyone whomsoever; affiant denies that, at the time of receiving said conveyance, or at any other time, or at all, he was fully, or at all, informed and had full, or any other, knowledge, or was fully, or at all, informed, or had full, or any other, knowledge, that the said Schuler had conveyed all, or any portion of, her rights, interests, claims and property, or all, or any of, her rights, or interests, or claims, or property, in said conveyance described, to the said J. A. Shellito, or any other person whomsoever, a long time prior to the execution of said conveyance by said Schuler to affiant, or at any other time, or at all;

That for and in consideration of the said conveyance by said Schuler to affiant, and at the time of said conveyance, and as a part thereof, affiant paid to said Schuler, and said Schuler received and accepted from affiant a certain sum of money in cash; that affiant made and completed said purchase from said Schuler of her said interest, in good faith, and without intention to, by the said purchase, defraud or injure anyone whomsoever;

Affiant denies that he took said conveyance from said Schuler in pursuance of a combination and conspiracy, or a combination, or conspiracy, by and between, or by, or between, the defendants in the above-entitled cause, or any of them, and the Foreign Mines & Development Company, the American Trona Company, and the California [49] Trona Company, of the Foreign Mines & Development Company, or the American Trona Company, or the California

Trona Company, wherein and whereby, or wherein, or whereby, the defendants above named, or any of them, and the said corporations, or any of the said corporations, confederated and combined, or confederated, or combined, together to injure plaintiff above named and to deprive and defraud him, or deprive, or defraud him, or to injure plaintiff above named, or defraud him of all, or any portion of, his right, title and interest, or all, or any portion of, his right, or title, or interest in and to, or in, or to, said placer mining claims;

Affiant denies that the said conveyance by the said Schuler to affiant was made and done, or was made, or done, pursuant to and in order to carry out a combination and conspiracy, or a combination, or conspiracy, or pursuant to, or in order to carry out a combination and conspiracy, or a combination, or conspiracy, to injure plaintiff and to deprive and defraud him, or deprive, or defraud him, or to injure plaintiff, or to deprive, or defraud him, of all, or any portion of, his right, title and interest, or all, or any portion of, his right, or title, or interest, in and to, or in, or to, said placer mining claims, and each and all of them, or said placer mining claims, or each, or all of them; affiant denies that said conveyance by said Schuler to affiant was made and done or was made, or done, wholly and totally, or wholly, or totally, without a valuable or other consideration;

Affiant denies that the said Foreign Mines & Development Company, the American Trona Company, and the California Trona Company have, or that the said Foreign Mines & Development Company, or the

American Trona Company, or the California Trona Company has, fraudulently, or in any other manner, attempted to procure the right, title and interest of Pack, one of the defendants above named, or the right, or title, or interest of the said Pack, in and to said placer locations, or in, or to, said placer locations for the said [50] or any other purpose, of using the said interest of the said Pack in and to said locations or in, or to, said locations, in such a way and manner, or in such a way, or manner as to destroy all, or any portion of, plaintiff's rights and interest, or plaintiff's rights, or interest, or any part thereof, or of both or either thereof, therein, and to defraud plaintiff above named, out of all, or any portion of, interest in and to, or in, or to, said claims, and each of them, or any of them, or to said claims, or each of them, or any of them, or in such a way, or manner, as to destroy all, or any portion of, plaintiff's rights and interest, or rights, or interest, or any part or portion thereof, or of either or both thereof, therein, or to defraud plaintiff above named out of all, or any portion of, interest in and to, or in, or to, said claims, or any of them; affiant denies that he has been acting as the agent, representative and attorney, or as agent, or as the representative, or attorney, of the said Foreign Mines & Development Company, the American Trona Company and the California Trona Company, or of the said Foreign Mines & Development Company, or the American Trona Company, or the California Trona Company, in endeavoring to deprive and defraud, or to deprive, or defraud, plaintiff of his rights and title, or rights, or title, or any



part or portion thereof, or either or both thereof, in and to, or in, or to, said placer mining locations; affiant denies that, under the direction and orders, or under the direction, or orders, of the said Foreign Mines & Development Company, the American Trona Company and the California Trona Company, or the said Foreign Mines & Development Company, or the American Trona Company, or the California Trona Company, fraudulently, or in any other manner, he obtained said transfer of the said one-eighth interest in and to, or in, or to, said placer mining claims, from said Schuler, in pursuance to a combination and conspiracy, or in pursuance to a combination, or conspiracy entered into [51] and carried on, or entered into, or carried on, by and between, or by, or between, said Foreign Mines & Development Company, the American Trona Company and the California Trona Company, or said Foreign Mines & Development Company, or the American Trona Company, or the California Trona Company, or any of them, and the said defendants herein, or any of them, or by and between, or by, or between, said Foreign Mines & Development Company, American Trona Company, and the California Trona Company, or said Foreign Mines & Development Company, or the American Trona Company, or the California Trona Company, or any of them, or the said defendants herein, or any of them, to injure plaintiff and defraud and deprive him, or to injure plaintiff, or defraud him of all, or any portion, of his right, title and interest, or all, or any portion of, his right, or title, or interest, in and to, or in, or to,

said claims, and each of them, or in and to, or in, or to, said claims, or each of them, or that he obtained the said transfer of the said one-eighth interest in and to, or in, or to, said placer mining claims, in pursuance of any combination and conspiracy, whatsoever, or in pursuance of any conspiracy whatsoever;

Affiant denies that in further pursuance of said, or any other combination and conspiracy, or said, or any other, combination, or conspiracy, and under the orders and direction, or under the orders, or direction, of the said Foreign Mines & Development Company, the American Trona Company and the California Trona Company, or the said Foreign Mines & Development Company, or the American Trona Company, or the California Trona Company, or any of them, or that in further pursuance of said, or any other, combination and conspiracy, or said, or any other, combination, or conspiracy, or under the orders and directions, or under the orders, or directions, of the said Foreign Mines & Development Company, the American Trona Company and the California Trona Company, or the said Foreign Mines & Development Company, or the American Trona Company, or the [52] California Trona Company, or any of them, affiant and his co-defendants, or any of them, caused to be served upon plaintiff notice of forfeiture referred to in the Bill of Complaint on file herein; affiant denies that the said transfer of the said one-eighth interest in and to, or in, or to said claims by the said Schuler to affiant, and the serving of said notice of forfeiture upon the same, or the said transfer of the said one-eighth

interest in and to, or in, or to, said claims, by the said Schuler to affiant, or the serving of the said notice of forfeiture upon the plaintiff, was all done, or that any part thereof was done, in pursuance to and in the carrying out of, or in pursuance to, or in the carrying out of, a combination and conspiracy, or a conspiracy, entered into by and between, or by or between, the said Foreign Mines & Development Company, the American Trona Company, and the California Trona Company, or by and between, or by, or between, the said Foreign Mines & Development Company, or the American Trona Company, or the California Trona Company, or any of them, and the defendants above named, or any of them, or by and between, or by, or between, the said Foreign Mines & Development Company, the American Trona Company, and the California Trona Company, or by and between, or by, or between, the said Foreign Mines & Development Company, or the American Trona Company, or the California Trona Company, or any of them, or the defendants above named, or any of them; affiant denies that the said Foreign Mines & Development Company, the American Trona Company and the California Trona Company, or the said Foreign Mines & Development Company, or the American Trona Company, or the California Trona Company, and the defendants above named, or the defendants above named, or any of them, confederated together, for the purpose of injuring the plaintiff and depriving and defrauding him of, or for the purpose of injuring plaintiff, or defrauding him of, all, or any portion of his rights, title and

interest, or all, or any portion of, his right, or title, or interest, in and [53] to, or in, or to, said placer mining claims;

Affiant denies that the notice of forfeiture was prepared and served upon plaintiff, or was prepared, or served, upon plaintiff, pursuant to and in the furtherance of, or pursuant to, or in the furtherance of, such, or any, other combination and conspiracy, or of such, or any other, conspiracy, between the defendants above named, or any of them, and the said Foreign Mines & Development Company, the American Trona Company and the California Trona Company, or between the defendants above named, or any of them, and the said Foreign Mines & Development Company, or the American Trona Company, or the California Trona Company, or any of them, or the said Foreign Mines & Development Company, or the American Trona Company, or the California Trona Company, or all or any of them; affiant denies that neither said Pack, defendant above named, nor any of the defendants above named, or their alleged co-conspirators, are entitled to any contribution from plaintiff in any sum or amount whatsoever;

And further answering Section XIX of said Bill of Complaint, affiant alleges the plaintiff has a plain, speedy and adequate remedy at law in the premises by way of payment of complainant's portions of the sums so expended for the performance of assessment work for the year 1911, and the demanding, procurement and recordation of a receipt for such payment as provided by Section 1426-o of the Civil Code of

the State of California and the recordation of such a receipt as effectually removes any cloud arising from the recordation of the affidavit of service of Exhibit "A" as any decree of this court or any other court can or will; and that affiant is irreparably injured in the event that complainant neglects or refuses to pay his said proportion of said sums in that affiant loses entirely the benefit and effect of his said Notice of Forfeiture through failure to record an affidavit of the service of [54] the same within ninety (90) days after said service, as required by said Section 1426-o of the Civil Code of the State of California, affiant being restrained from recording said affidavit of service by order of the above-entitled Court.

JOSEPH K. HUTCHINSON.

Subscribed and sworn to before me this 14 day of December, 1914.

[Seal]

SYDNEY VAIL PARDEE,  
Notary Public in and for the County of Los Angeles,  
State of California. [55]

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*In the District Court of the United States, Southern  
District of California, Southern Division.*

No. B. 50—EQUITY.

E. THOMPSON,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER, and  
JOSEPH K. HUTCHINSON,  
Defendants.



**Affidavit of Defendant Thomas W. Pack, on Motion  
to Dissolve Injunction Pendente Lite.**

State of California,  
County of Los Angeles,—ss.

Thomas W. Pack, being duly sworn, deposes and says: That he is and at all the times herein mentioned was, a white male citizen of the United States and a resident and citizen of the State of California, over the age of twenty-one years, and one of the defendants in the above-entitled cause; that the interests of affiant in the subject matter of said cause are joint with and inseparable from the like interests of the other two defendants in said cause; that affiant makes this affidavit on motion to dissolve the injunction *pendente lite* heretofore given, made and entered by the above-entitled court in said cause, for and on behalf of each and all of the said defendants, including affiant;

That affiant has read the bill of complaint on file in said cause and knows the contents thereof and each and every allegation therein contained; that all of the facts set forth and attempted to be set forth in said Bill of Complaint are within the personal knowledge of affiant;

That in the year 1910 affiant personally paid out and expended of his own moneys all of the expenses and costs and every expense and cost of locating and recording in the names of E. Thompson, complainant herein, H. C. Fursman, W. Huff, H. A. Baker, R. [56] Waymire, P. Perkins, and D. Smith and affiant as set forth in Section I of the Bill of Complaint

on file herein, the placer mining claims described in said bill, reference to which is hereby made for a more complete description thereof; that said E. Thompson, complainant herein, H. C. Fursman, W. Huff, H. A. Baker, R. Waymire, P. Perkins and D. Smith did not contribute or pay to affiant, nor have they ever contributed or paid to affiant, nor did any of them contribute nor pay to affiant nor have any of them ever contributed or paid to affiant, said money so paid out and expended by affiant for said expenses and costs, or any part or portion thereof;

Affiant alleges and affirms that he did pay out and expend of his own moneys, during the month of December, 1911, the sum of twelve hundred dollars (\$1200), in amounts of one hundred dollars (\$100), with the intent and for the purpose of complying with the requirements of Section 2324 of the Revised Statutes of the United States and amendments thereof, concerning and providing for the performance of annual labor upon mining claims, as to each and all of the said certain twelve placer mining claims hereinbefore referred to and more fully described in Bill of Complaint on file herein, and with the intent and purpose of so complying with the said requirements of Section 2324 of the said Revised Statutes as to and for the year 1911; that as to said sum of twelve hundred dollars (\$1200) so paid out and expended by affiant as aforesaid, with the intent and for the purpose aforesaid, affiant alleges that all of said sum was so paid out and expended in the manner prescribed by law as being the proper manner in which to comply with said requirements of

said Section 2324 of said Revised Statutes; that the co-owners of affiant in the said hereinabove referred to placer mining claims, including complainant, have not contributed or paid to affiant, nor has any of them contributed or paid to affiant at any time, or at all, any part or portion whatsoever of said sum of twelve hundred dollars (\$1200) paid out and expended by affiant as [57] hereinabove alleged, nor have they, nor has any of them, ever tendered or offered any part or portion whatsoever of said sum of twelve hundred dollars (\$1200) to affiant, except as in the Bill of Complaint set forth; affiant denies that complainant or any of his co-locators or anyone on their behalf or on behalf of either of them, expended any money for or performed any representation work in or for the year 1911 on said twelve placer mining claims or either thereof heretofore referred to, or that any representation work was done on said twelve claims, or either or any of them, other than the work done by affiant as hereinabove set out.

Affiant denies that he has ever conspired and combined or conspired or combined with the other defendants in this suit and the Foreign Mines & Development Company, the American Trona Company and the California Trona Company or with any or either of them to injure complainant and to deprive and defraud or to deprive or to defraud complainant of all or any of complainant's right, title and interest, or right, or title, or interest in and to, or in, or to, the placer mining claims described in said Bill of Complaint; affiant denies that he caused the Notice of Forfeiture, Exhibit "A," to be served upon com-

plainant in pursuance of a, or any, combination or conspiracy or of a, or any, combination or conspiracy, and under the orders and directions or under the orders or under the directions of the said Foreign Mines & Development Company, the American Trona Company and the California Trona Company, or any or either of them;

Affiant denies that the sum of seven hundred and fifty dollars (\$750) or any part of said sum sued for in the action of "W. W. Colquhoun, Plaintiff, vs. Thos. W. Pack, Henry E. Lee and T. O. Toland, a copartnership, Thos. W. Pack, Henry E. Lee and T. O. Toland, as individuals, Defendants," and numbered 46,604 in the records of the Superior Court of the State of California, [58] in and for the City and County of San Francisco, referred to in section IX of the Bill of Complaint on file herein, constitutes part of the amount which affiant and his codefendants in the above-entitled cause claim in the Notice of Forfeiture referred to in the said Bill of Complaint, to have been paid by affiant in the year 1911 for doing the assessment work on the said twelve placer mining claims; affiant alleges that neither the said sum of seven hundred and fifty dollars (\$750) nor any part of said sum constitutes a part or portion of the said sum of twelve hundred dollars (\$1200) referred to in said Notice of Forfeiture, and hereinabove alleged by affiant to have been paid out and expended by him;

Affiant denies that the sum of three thousand, six hundred and forty-five dollars (\$3645) or any part of said sum sued for in the action of "M. A. Varney,



Plaintiff, vs. Thos. W. Pack, Henry E. Lee and T. O. Toland, as individuals, and Thos. W. Pack, Henry E. Lee and T. O. Toland, a copartnership, defendants," and numbered 46692, in the records of the Superior Court of the State of California, in and for the City and County of San Francisco, referred to in Section X of the Bill of Complaint on file herein, constitutes part of the amount which affiant and his co-defendants in the above-entitled cause claim in the Notice of Forfeiture referred to in the said Bill of Complaint, to have been paid by affiant in the year 1911 for doing the assessment work on the said twelve placer mining claims; affiant alleges that neither said sum of three thousand six hundred and forty-five dollars (\$3645) nor any part thereof constitutes a part or portion of the said sum of twelve hundred dollars (\$1200) referred to in said Notice of Forfeiture, and hereinabove alleged by affiant to have been paid out and expended by him;

Affiant denies that the sum of seven hundred and fifty dollars (\$750) or any part of said sum sued for in the action of "W. W. Colquhoun, Plaintiff, vs. H. C. Fursman, W. Huff, R. Waymire, [59] P. Perkins, H. A. Baker, E. Thompson, D. Smith and S. Schuler, a co-partnership, and H. C. Fursman, W. Huff, R. Waymire, P. Perkins, H. A. Baker, E. Thompson, D. Smith and S. Schuler, as individuals, Defendants," and numbered 50723 in the files and records of the Superior Court of the State of California, in and for the City and County of San Francisco, referred to in Section XI of the Bill of Complaint on file herein, constitutes part of the amount



which affiant and his co-defendants in the above-entitled cause claim in the Notice of Forfeiture referred to in the said Bill of Complaint, to have been paid by affiant in the year 1911 for doing the assessment work on the said twelve placer mining claims; affiant alleges that neither said sum of seven hundred and fifty dollars (\$750) or any part of said sum constitutes a part or portion of the said sum of twelve hundred dollars (\$1200) referred to in said Notice of Forfeiture, and hereinabove alleged by affiant to have been paid out and expended by him;

Affiant denies that the sum of three thousand six hundred and seventy dollars (\$3,670) or any part of said sum sued for in the action of "M. A. Varney, Plaintiff, vs. H. C. Fursman, W. Huff, R. Waymire, P. Perkins, H. A. Baker, E. Thompson, D. Smith and S. Schuler, a copartnership, and H. C. Fursman, W. Huff, R. Waymire, P. Perkins, H. A. Baker, E. Thompson, D. Smith and S. Schuler, as individuals, Defendants," and numbered 50,724 in the files and records of the Superior Court of the State of California, in and for the City and County of San Francisco, referred to in Section XII of the Bill of Complaint on file herein, constitutes part of the amount which affiant and his codefendants in the above-entitled cause claim in the Notice of Forfeiture referred to in the said Bill of Complaint, to have been paid by affiant in the year 1911 for doing the assessment work on the said twelve placer mining claims; affiant alleges that neither said sum of three thousand six hundred and seventy dollars (\$3,670) nor any part [60] thereof constitutes a part or

portion whatsoever of the said sum of twelve hundred dollars (\$1200) referred to in said Notice of Forfeiture, and hereinabove alleged by affiant to have been paid out and expended by him;

Affiant denies that the sum of one thousand four hundred and forty-three and 50/100 Dollars (\$1,443.50) or any part of said sum sued for in the action of "Raphael Mojica, Plaintiff, vs. H. C. Fursman, W. Huff, R. Waymire, P. Perkins, H. A. Baker, E. Thompson, D. Smith, T. W. Pack, a copartner-ship, H. C. Fursman, W. Huff, R. Waymire, P. Perkins, H. A. Baker, E. Thompson, D. Smith, T. W. Pack, an association, and Henry E. Lee, Thomas O. Toland, H. C. Fursman, W. Huff, Rudolph Waymire, P. Perkins, H. A. Baker, E. Thompson, Dudley Smith, Stella Schuler, John Doe, Jane Roe, Richard Roe and Mary Roe, Defendants," and numbered 54,989 in the files and records of the Superior Court of the State of California, in and for the City and County of San Francisco, referred to in Section XII of the Bill of Complaint on file herein, constitutes part of the amount which affiant and his codefendants in the above-entitled cause claim in the Notice of Forfeiture referred to in the said Bill of Complaint, to have been paid by affiant in the year 1911 for doing the assessment work, on the said twelve placer mining claims; affiant alleges that neither said sum of one thousand four hundred and forty-three and 50/100 dollars (\$1,443.50) nor any part of said sum constitutes a part or portion whatsoever of the said sum of twelve hundred dollars (\$1,200) referred to in said Notice of Forfeiture, and hereinabove al-

leged by affiant to have been paid out and expended by him;

Affiant alleges that on the 18th day of January, 1912, he did receive from one Henry E. Lee, the same person who verified the Bill of Complaint on file herein, the sum of one thousand dollars (\$1,000); affiant denies that said sum of one thousand dollars (\$1,000) so paid to him by said Lee was paid by said Lee as the duly [61] authorized agent and representative of this plaintiff, and of the hereinabove-named co-locators of this plaintiff; affiant denies that said sum of one thousand dollars (\$1,000) so paid to him by said Lee was so paid for the purpose of being applied toward and used in the assessment work for the year 1911 on said twelve placer mining claims; or that said sum or any part thereof was applied toward and used in the assessment work for the year 1911 on said twelve placer mining claims;

That answering the allegations of Section XV of said Bill of Complaint this affiant denies that during the year 1911 and prior to the time any money is claimed to have been expended by affiant in the Notice of Forfeiture hereinabove referred to, or at any other time or at all, affiant was indebted to said Henry E. Lee, the duly authorized agent of plaintiff, and his co-locators, or the duly authorized agent of plaintiff, or his co-locators, or to the said Lee in any other capacity, or as an individual, or personally, or at all, in the sum of eighteen hundred and thirty-six dollars (\$1836), or in any other sum, or at all, and denies that the said Lee, acting as such agent for plaintiff and his co-locators, or that the said Lee in

any other capacity, or as an individual, or personally, or at all, directed affiant to use and utilize or to use or utilize all of the sum of eighteen hundred and thirty-six dollars (\$1,836), or any portion thereof, or so much thereof as might be necessary, in the annual representation of the placer mining claims referred to in said Bill of Complaint for the year 1911 and 1912 or for the year 1911 or for the year 1912, or for any other year, or at all, and denies that affiant agreed with the said Lee that he would so utilize and use, or that he would so utilize or use said money; affiant denies that the sum of eighteen hundred and thirty-six dollars is and should be or is or should be a portion of the money expended by affiant as described in the said Notice of Forfeiture; affiant denies that the said money and indebtedness or money or indebtedness was money due and owing, or was money due or owing to this plaintiff [62] and his co-locators or to this plaintiff or his co-locators from affiant; affiant denies that said money should be credited to this plaintiff and his co-locators or to this plaintiff or to his co-locators in proportion to their respective interests in the said twelve placer mining claims; affiant denies that he had at any time whatsoever owed to the said Lee and to plaintiff and his co-locators, or to the said Lee, or to plaintiff, or to his co-locators, any sum or sums of money whatsoever; affiant alleges that the said Lee is now, and for a long time prior to the date hereof, has been indebted to affiant in a sum in excess of two thousand dollars (\$2,000); that said sum is now wholly due and owing from the said Lee to affiant and unpaid;

And furthering answering the allegations contained in said section XV affiant alleges that the facts and circumstances relating to the signing and delivery of the written acknowledgment of indebtedness to said Henry E. Lee in the sum of \$1,836 referred to in said section are as follows: That at or just prior to the time of the signing and delivery of said written acknowledgment, and several months prior to December, 1911, said Henry E. Lee applied to this affiant for a loan of money, that affiant refused to make a loan, that said Lee was then indebted to affiant in a large sum and that said Lee stated that if affiant would assist said Lee to obtain a loan, said Lee would repay affiant the amount said Lee then stood indebted to affiant, that said Lee then requested affiant to indorse the promissory note of said Lee in order that said Lee might negotiate the same and procure a loan, that affiant refused to indorse the note of said Lee whereupon said Lee requested that affiant give said Lee a written acknowledgment of indebtedness from affiant to said Lee in order that said Lee might obtain a loan on his, said Lee's promissory note secured by assignment of said written acknowledgment of indebtedness, that said Lee requested that said written acknowledgment of indebtedness be given in some odd sum [63] in order that a possible lender might not suspect that the same had been given as an accommodation, that affiant acceded to the said requests of said Lee and gave Lee a written acknowledgment of indebtedness in the form of an "I. O. U." for the sum of \$1,836, for the purpose of enabling said Lee to repay affiant



the amount of said Lee's indebtedness to affiant, that affiant received no consideration for said written acknowledgment, either past or present, that said Lee was unable to procure a loan on the security of said I. O. U., that the same has never been negotiated and is wholly without consideration of any kind whatsoever or at all;

Affiant alleges upon his information and belief that complainant is financially irresponsible and unable to pay his or any proportion of the money expended in doing the assessment work on the aforesaid claims during the year 1911;

That affiant further alleges that complainant has an adequate remedy at law by way of payment of complainant's proportion of the sum so expended in the performance of assessment work for the year 1911, and the demanding, procuring and recordation of a receipt for said payment as provided by Section 1426-o of the Civil Code of the State of California, that the recordation of such receipt as effectually removes any cloud arising from the recordation of the affidavit of service of Exhibit "A" as any decree of this or any other court can or will, and that affiant is irreparably injured in the event that complainant neglects or refuses to pay his said proportion of said sums in that affiant loses entirely the benefit and effect of his said Notice of Forfeiture through failure to record an affidavit of the service of the same within ninety (90) days after said service, as required by said section 1426-o of the [64] Civil Code of the State of California, affiant being restrained from recording said affidavit of service by

order of the above-entitled Court.

THOMAS W. PACK.

Subscribed and sworn to before me this 14 day of  
December, 1914.

[Seal] SYDNEY VAIL PARDEE,  
Notary Public in and for the County of Los Angeles,  
State of California. [65]

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*In the District Court of the United States, Southern  
District of California.*

E. THOMPSON,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and  
JOSEPH K. HUTCHINSON,  
Defendants.

**Affidavit of S. Schuler [on Motion to Dissolve  
Injunction Pendente Lite].**

State of California,  
County of Los Angeles,—ss.

S. SCHULER, being duly sworn, deposes and  
says: That she is, and at all the times herein men-  
tioned, was a white, female citizen of the United  
States, and a resident and citizen of the State of  
California, over the age of 21 years, and one of the  
defendants in the above-entitled cause; that the  
interests of affiant in the subject matter of said cause  
are joint with and inseparable from the like interests  
of the other two defendants in said cause; that affiant  
makes this affidavit for and on behalf of each and

all of the said defendants above named, including affiant;

That affiant has read the Bill of Complaint on file in said cause and knows the contents thereof and each and every allegation therein contained;

Affiant denies that, on or about the 25th day of December, 1913, she made, executed, acknowledged and delivered her deed of conveyance to one J. A. Shellito whereby she transferred and conveyed, or whereby she transferred, or conveyed, to said Shellito, or to anyone else whomsoever, all or any portion, of her rights, title and interest, or all, or a portion of, her rights, or title, or interest, in and to, or in, or to, said placer mining claims, or [66] that she delivered any deed and conveyance, or deed, or conveyance, to said Shellito, or to anyone else whomsoever;

Affiant alleges that on or about, to wit, the 25th day of December, 1913, affiant made, signed and acknowledged a deed of conveyance from herself as grantor to one J. A. Shellito as grantee; that said deed conveyed and would have conveyed, had the same been delivered, all of affiant's right, title and interest in and to said placer mining claims; that said deed was so executed by affiant to be placed in escrow, and not to be delivered to the grantee named therein, until certain conditions to be performed by the said grantee named therein, for and on behalf of affiant, had been fully performed; that many of such conditions were impossible of fulfillment and performance within a period of many months after the date of said deed; that other of the said conditions were to be performed and fulfilled by the said Shellito in

favor and on behalf of affiant immediately upon the signing and acknowledgment of said deed; that in and by the terms of said escrow, said deed was to be placed by affiant in the hands of the Security Trust & Savings Bank, a corporation, situate in the city of Los Angeles, county of Los Angeles, State of California, to be held by it as escrow holder, and to be delivered by it to said Shellito, upon the fulfillment and performance of all said conditions; that immediately upon the making, signing and acknowledgment of said deed, affiant at the city and county of San Francisco, State of California, handed the said deed to one Henry E. Lee, the person referred to in the Bill of Complaint on file herein, upon his promise made to affiant to take the same from the said city and county of San Francisco to the said city of Los Angeles, county of Los Angeles, and there to place the said deed in escrow, with said Security Trust & Savings Bank;

That affiant is informed and believes, and therefore alleges the fact to be that the said Lee did not keep said promise so made to affiant, and that he did not place, nor has he ever [67] placed said deed in escrow with said Security Trust & Savings Bank, or elsewhere, pursuant to the terms of said promise made to affiant as aforesaid, or otherwise, or at all;

None of the conditions which were conditions precedent to the delivery by the said Security Trust & Savings Bank as escrow holder for affiant of said deed, has ever been fulfilled or performed by Shellito, or any other person, whomsoever; that said Lee has never returned said deed to affiant; that affiant does

not know where said deed now is, or has she known since the date upon which she handed the same to the said Lee, where the said deed, or in whose possession it, has been; that someone, of whose identity affiant has not personal knowledge, wholly without affiant's consent or knowledge or authority, recorded said deed, in the month of March or April, 1914, in the office of the county recorder of the county of San Bernardino, State of California;

That affiant is informed and believes, and therefore alleges, that the person who so recorded said deed in the said office of the county recorder of the county of San Bernardino, was the said Henry E. Lee;

That thereafter, and on or about, to wit: the 14th day of January, 1914, affiant made, executed, acknowledged and delivered to Joseph K. Hutchinson, one of the defendants, above named, her certain grant, bargain and sale deed, conveying to said Hutchinson all the right, title and interest, to wit: an undivided one-eighth interest, of affiant, in and to the 175 placer mining claims referred to in Section I of the said Bill of Complaint on file herein, which said 175 placer mining claims are situate in and upon Searles Borax Lake, in the County of San Bernardino, State of California; that at the time affiant conveyed her said interest in said placer mining claims to said Hutchinson, the said interests so conveyed stood upon the county records of the county recorder in and for the said county of San Bernardino in the name of affiant and had so stood in her name for more than one year prior to the date of [68]



said transfer without any cloud upon, or incumbrance against, said interest, appearing upon the face of the said records;

That prior to the said execution of the said deed to said Hutchinson, and after the said making, signing and acknowledging of said deed to said Shellito, affiant stated all of the facts of the case to her attorney, one Ezra W. Decoto, Deputy District Attorney of the county of Alameda, State of California, and thereupon and after said statement of all of the facts of the case by affiant to the said Decoto, the said Decoto advised affiant that she could legally, and without liability, or without breach of any duty owed by her to the said Shellito, or to anyone else, make, execute, and acknowledge the said deed to said Hutchinson; that thereafter and in the presence of the said Decoto, and acting upon his advice, the said Schuler made, executed, acknowledged and delivered the said deed to the said Hutchinson;

That at no time prior to the execution and delivery of said deed did affiant tell said Hutchinson, nor did her attorney tell said Hutchinson, nor did either affiant or her said attorney in any way whatsoever notify the said Hutchinson that affiant had made, signed and acknowledged said deed to said Shellito, prior thereto, and on or about, to wit: the said 25th day of December, 1913, or at any other time, or at all;

That for and in consideration of the said conveyance by affiant to said Hutchinson, and at the time of said conveyance, and as a part thereof, said Hutchinson paid to affiant, and affiant received and accepted

from said Hutchinson, a certain sum of money in cash; that said Schuler made and completed said sale to said Hutchinson of her said interest, in good faith, and without intention to, by the said sale, defraud or injure anyone whomsoever;

Affiant denies that she made said conveyance to said Hutchinson in pursuance of a combination and conspiracy, or conspiracy, by and between, or by, or between, the defendants in the above-entitled cause, or any of them, and the Foreign Mines [69] & Development Company, the American Trona Company, and the California Trona Company, or the Foreign Mines & Development Company or the American Trona Company, or the California Trona Company, wherein and whereby, or wherein, or whereby, the defendants above named, or any of them, and the said corporations, or any of the said corporations, confederated and combined, or confederated, together, to injure plaintiff above named and to deprive and defraud him, or to injure plaintiff above named, or defraud him of all, or any portion of, his right, title and interest, or all, or any portion of his right, or title, or interest in and to, or in, or to, said placer mining claims;

Affiant denies that the said conveyance by affiant to the said Hutchinson was made and done, or was made, or done, pursuant to and in order to carry out a combination and conspiracy, or conspiracy, or pursuant to, or in order to carry out a combination and conspiracy, or conspiracy, to injure plaintiff and to deprive and defraud him, or defraud him, or to injure plaintiff, or defraud him, of all, or any portion

of, his right, title and interest, or all, or any portion of, his right, or title, or interest, in and to, or in, or to, said placer mining claims, and each and all of them or said placer mining claims, or each, or all of them; affiant denies that said conveyance by affiant to the said Hutchinson was made and done, or was made, or done, wholly and totally, without a valuable or other consideration;

Affiant denies that in pursuance of said, or any other, combination and conspiracy, or conspiracy, and under the orders and directions, or under the orders or directions of the Foreign Mines & Development Company, the American Trona Company and the California Trona Company, or the said Foreign Mines & Development Company, or the American Trona Company, or the California Trona Company, or any of them, and that in pursuance [70] of said, or any other, combination and conspiracy, or conspiracy, or under the orders and direction, or under the orders, or direction, of the said Foreign Mines & Development Company, the American Trona Company and the California Trona Company, or the said Foreign Mines & Development Company, or the American Trona Company, or the California Trona Company, or any of them, affiant and her co-defendants, or any of them, caused to be served upon plaintiff Notice of Forfeiture referred to in the Bill of Complaint on file herein; affiant denies that the said transfer of the said one-eighth interest in and to, or in, or to, said claims by affiant to the said Hutchinson, and the serving of said Notice of Forfeiture upon the same, or the said transfer of the said one-

eightth interest in or to, or in, or to, said claims by affiant to the said Hutchinson, or the serving of the said notice of Forfeiture upon the plaintiff, was all done, or that any part thereof was done, in pursuance to and in the carrying out of, or in pursuance to, or in the carrying out of, the combination and conspiracy, or a conspiracy, entered into by and between, or by, or between, the said Foreign Mines & Development Company, the American Trona Company, and the California Trona Company, or by and between, or by, or between, the said Foreign Mines & Development Company, or the American Trona Company, or the California Trona Company, or any of them, and the defendants above-named, or any of them, or by and between, or by, or between, the said Foreign Mines & Development Company, the American Trona Company, and the California Trona Company, or by and between, or by, or between the said Foreign Mines & Development Company, or the American Trona Company, or the California Trona Company, or any of them, or the defendants above-named, or any of them; affiant denies that the said Foreign Mines & Development Company, the American Trona Company, and the California Trona Company, or the said Foreign Mines & Development Company, or the American Trona Company, or the California Trona Company, [71] and the defendants, above named or the defendants above named, or any of them, confederated together, for the purpose of injuring the plaintiff and depriving and defrauding him of, or for the purpose of injuring plaintiff, or defrauding him

of, all, or any portion of his right, title and interest, or all, or any portion of his right, or title, or interest, in and to, or in, or to, said placer mining claims;

Affiant denies that the Notice of Forfeiture was prepared and served upon plaintiff, or was prepared, or served, upon plaintiff, pursuant to and in the furtherance of, or pursuant to, or in the furtherance of, such or any other, combination and conspiracy, or of such, or any other, conspiracy, between the defendants above named, or any of them, and the said Foreign Mines & Development Company, the American Trona Company, and the California Trona Company, or between the defendants, above-named, or any of them, and the said Foreign Mines & Development Company, or the American Trona Company, or the California Trona Company, or any of them, or the said Foreign Mines & Development Company, or the American Trona Company, or the California Trona Company, or all, or any of them; affiant denies that neither said Pack, defendant above named, nor any of the defendants above-named, or the alleged co-conspirators, are entitled to any contribution from plaintiff in any sum or amount whatsoever;

And further answering Section XIX of said Bill of Complaint, affiant alleges that plaintiff has a plain, speedy and adequate remedy at law, in the premises, by way of payment of plaintiff's proportion of the sums so expended for the performance of assessment work for the year 1911, and the demanding, procurement and recordation of a receipt for such payment as provided by Section 1426-o of the Civil Code of



the State of California; that the recordation of such a receipt as effectually removes any cloud arising from the recordation of the affidavit of service of [72] Exhibit "A," as any decree of this Court or any other Court can or will; that affiant is irreparably injured in the event that complainant neglects or refuses to pay his said portion of said sums, in that plaintiff is a non-resident of the State of California, as appears from the Bill of Complaint on file herein, and in that affiant loses entirely the benefit and effect of his said Notice of Forfeiture through failure to record an affidavit of service of the same within ninety days after the said service, affiant being restrained from so doing by order of the above-entitled Court.

S. SCHULER.

Subscribed and sworn to before me, this 14 day of Dec. 1914.

[Seal] SYDNEY VAIL PARDEE,  
Notary Public in and for Los Angeles County, State  
of California. [73]

[Indorsed]: Original. No. B. 50—Equity. United States District Court, Southern District of California, Southern Division. E. Thompson, Complainant, vs. Thos. W. Pack, et al., Defendants. Filed Dec. 14, 1914. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Affidavits of Thos. W. Pack, Stella Schuler and Joseph K. Hutchinson. Pursuant to Rule 49, E. L. Ball, Attorney at law, 737 Consolidated Realty Bldg., Los Angeles, Cal. is hereby designated as the person on whom to

serve papers in this cause. Joseph K. Hutchinson,  
Attorney for Defendants. San Francisco, Cal. [74]

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**[Order Continuing Hearing on Motion to Vacate  
Injunction Pendente Lite.]**

At a stated term, to wit, the July Term, A. D., 1914,  
of the District Court of the United States of  
America, in and for the Southern District of  
California, Southern Division, held at the court-  
room thereof, in the city of Los Angeles, on  
Friday, the eighteenth day of December, in the  
year of our Lord, one thousand nine hundred  
and fourteen. Present: The Honorable BEN-  
JAMIN F. BLEDSOE, District Judge.

No. B. 50—EQUITY.

E. THOMPSON,

Complainant,

vs.

THOMAS W. PACK, et al.,

Defendants.

On the Court's own motion, it is ordered that this  
cause, now upon the calendar, pursuant to notice, for  
hearing on Saturday, December 19th, 1914, on a  
motion to vacate and set aside the order heretofore  
made and entered herein granting an injunction  
*pendente lite*, be, and the same hereby is continued  
until Monday, the 21st day of December, 1914, at  
10:30 o'clock, A. M., for said hearing. [75]

[Order Denying Motion to Vacate Injunction  
Pendente Lite etc.]

At a stated term, to wit, the July Term, A. D., 1914, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the City of Los Angeles, on Monday, the twenty-first day of December, in the year of our Lord, one thousand nine hundred and fourteen. Present: The Honorable Benjamin F. Bledsoe, District Judge.

No. B. 50—EQUITY.

E. THOMPSON,

Complainant,

vs.

THOMAS W. PACK, et al.,

Defendants.

This cause coming on this day to be heard on defendants' motion to vacate the order heretofore made and entered herein granting an injunction *pendente lite*; John B. Clayberg, Esq., appearing as counsel for complainant; Joseph K. Hutchinson, Esq., appearing as counsel for defendants; I. Benjamin being present as shorthand reporter of the proceedings, and acting as such; now, on motion of John B. Clayberg, Esq., of counsel for complainant, it is ordered that R. P. Henshall, Esq., who is present in Court, be, and he hereby is associated with said John B. Clayberg, Esq., as counsel for complainant; and said

motion having been argued, in connection with the argument of a motion for an order vacating and dissolving the temporary restraining order heretofore made, filed and entered in cause No. B. 57—Equity, Cecil C. Carter, Complainant, vs. Thomas W. Pack, et al., Defendants, in support thereof, by Joseph K. Hutchinson, Esq., of counsel for defendants, and in opposition thereto by R. P. Henshall, Esq., and John B. Clayberg, Esq., of counsel for complainant; and said cause having been submitted to the court for its consideration and decision on said motion and the argument thereof; it is now by the Court ordered that defendants' motion to vacate the order heretofore made and entered herein granting an injunction *pendent lite* be, and the same hereby is denied; and [76] it is further ordered that complainant be, and he hereby is enjoined from making, executing or delivering conveyance, or in any way conveying or disposing of title to the property involved in this cause during the pendency of this proceeding, and until the final determination of this cause on its merits, counsel for complainant to prepare an appropriate draft or order in accordance herewith for signature. [77]

*In the District Court of the United States, in and for  
the Southern District of California, Southern  
Division.*

No. B. 50—EQUITY.

E. THOMPSON,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and  
JOSEPH K. HUTCHINSON,

Defendants.

**Order Denying Motion to Dissolve Injunction  
Pendente Lite, Etc.**

BE IT REMEMBERED, that on the 21st day of December, 1914, at 10:30 o'clock A. M. of said day, at the courtroom of the above-entitled court, in the City of Los Angeles, State of California, pursuant to notice duly given, the motion of the defendants Thomas W. Pack, Stella Schuler and Joseph K. Hutchinson, in the above-entitled proceeding for an order vacating the order granting an injunction *pendente lite* in the above-entitled action theretofore, and on the 11th day of December, 1914, given, made and entered in the above-entitled proceeding, and for a further order dissolving the injunction *pendente lite* issued pursuant to said order of the 11th day of December, 1914, came on regularly for hearing, and was heard, upon all the papers, records and proceedings in said above-entitled proceeding, upon defendants' notice of motion and upon the affidavits of Joseph K. Hutchinson, Thomas W. Pack,



and Stella Schuler on file in the above-entitled proceeding, said defendants appearing by Joseph K. Hutchinson, Esq., their solicitor, and the complainant appearing by J. B. Clayberg, Esq., and R. P. Henshall, Esq., her solicitors, whereupon said motion [78] was argued and after being duly considered by the Court.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that said motion for an order vacating the order granting an injunction *pendente lite* in the above-entitled proceeding heretofore and on the 11th day of December, 1914, given, made and entered in the above-entitled proceeding and for a further order dissolving the injunction *pendente lite* issued pursuant to said order, be and the same is, denied; it is further ordered, adjudged and decreed that the complainant herein, her attorneys, agents and representatives, or any, or either of them, be, and they are, and each of them is, hereby enjoined and restrained from making, executing or delivering any deed or other conveyance whatsoever, or at all, of the placer mining claims described in the Bill of Complaint on file herein or any of said claims, or from in any way conveying her or any of her interests in and to said claims until the final determination of this proceeding or the further order of this Court.

Dated, Los Angeles, Cal., December 21, 1914.

BENJAMIN F. BLEDSOE,

Judge.

[Indorsed]: No. B. 50—Equity. In the United States District Court, in and for the Southern District of California, Southern Division. E. Thomp-

son, Complainant, vs. Thomas W. Pack et al., Defendants. Order Denying Motion to Dissolve Injunction *Pendente Lite*, etc. Filed Dec. 26, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Charles W. Slack, Joseph K. Hutchinson, Solicitors for Defendants, 923 First National Bank Bldg., San Francisco, Cal. Eq. Order Book. [79]

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*In the District Court of the United States, in and for  
the Southern District of California.*

No. B. 50—Equity.

E. THOMPSON,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and  
JOSEPH K. HUTCHINSON,

Defendants.

**Assignment of Error.**

NOW COME THOMAS W. PACK, STELLA SCHULER and JOSEPH K. HUTCHINSON, defendants above named, and make and file this, their assignment of error:

I.

That the District Court of the United States, in and for the Southern District of California, erred in giving, making and entering its order of December 21, 1914, in the above-entitled proceeding, which said order denied the motion of the above-named defendants for an order vacating the order granting

an injunction *pendente lite* in the above-entitled proceeding theretofore and on the 11th day of December, 1914, given, made and entered in the above-entitled proceeding, and for a further order dissolving the injunction *pendente lite* issued pursuant thereto.

San Francisco, Cal., December 23d, 1914.

CHARLES W. SLACK,  
JOSEPH K. HUTCHINSON,  
Solicitors for Defendants. [80]

[Indorsed]: No. B. 50—Equity. In the United States District Court, in and for the Southern District of California, Southern Division. E. Thompson, Complainant, vs. Thomas W. Pack et al., Defendants. Assignment of Error. (Order of Dec. 21, 1914.) Original. Filed Dec. 26, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Charles W. Slack, Joseph K. Hutchinson, Solicitors for Defendants, 923 First National Bank Bldg., San Francisco, Cal. [81]

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*In the District Court of the United States, in and  
for the Southern District of California.*

No. B. 50—Equity.

E. THOMPSON,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and  
JOSEPH K. HUTCHINSON,

Defendants.

**Petition for an Order Allowing an Appeal.**

The above-named defendants, Thomas W. Pack, Stella Schuler and Joseph K. Hutchinson, conceiving themselves aggrieved by the order entered on the 21st day of December 1914, in the above-entitled proceeding, which said order denied said defendants' motion for an order vacating the order granting an injunction *pendente lite* in the above-entitled action theretofore and on the 11th day of December, 1914, given, made and entered in the above-entitled proceeding, and for a further order dissolving the injunction *pendente lite* issued pursuant thereto, do, and each of them does, hereby appeal from said order of the 21st day of December, 1914, to the United States Circuit Court of Appeals, for the Ninth Circuit, and they pray, and each of them prays, that this, their appeal, be allowed; and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the said United States Circuit Court of Appeals, for the Ninth Circuit.

San Francisco, Cal., December 23d, 1914.

CHARLES W. SLACK,  
JOSEPH K. HUTCHINSON,

Solicitors for Defendants.

And now, to wit, on December 26, 1914, it is ORDERED that the foregoing appeal be allowed as prayed for, upon giving bond on appeal in the sum of \$250.00.

BENJAMIN F. BLEDSOE,  
District Judge. [82]

[Indorsed]: No. B. 50.—Equity. In the United States District Court, in and for the Southern District of California, Southern Division. E. Thompson, Complainant, vs. Thomas W. Pack et al., Defendants. Petition for and Order Allowing Appeal. (Order of Dec. 21, 1914.) Original. Filed Dec. 26, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Charles W. Slack, Joseph K. Hutchinson, Solicitors for Defendants, 923 First National Bank Bldg., San Francisco. Cal. Eq. Order Book. [83]

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*In the District Court of the United States, in and for  
the Southern District of California, Southern  
Division.*

No. B. 50—Equity.

E. THOMPSON,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and  
JOSEPH K. HUTCHINSON,

Defendants.

**Undertaking on Appeal.**

KNOW ALL MEN BY THESE PRESENTS:

That United States Fidelity & Guaranty Company, a corporation, duly incorporated under and by virtue of the laws of the State of Maryland and authorized by its charter and by-law to become sole surety on bonds and undertakings, is held and firmly bound unto E. Thompson in the full and just sum of Two Hundred Fifty Dollars (\$250.00) lawful



money of the United States, to be paid to the said E. Thompson, her executors, administrators or assigns; to which payment the said United States Fidelity & Guaranty Company binds itself by these presents.

IN WITNESS WHEREOF, the United States Fidelity & Guaranty Company has caused these presents to be executed by its duly authorized attorney in fact and has caused these presents to be sealed with the seal of the United States Fidelity & Guaranty Company on this 26th day of December in the year of our Lord one thousand nine hundred and fourteen.

WHEREAS, lately, at a District Court of the United States, for the Southern District of California, Southern Division, in a suit depending in said Court between E. Thompson as complainant and Thomas W. Pack, Stella Schuler and Joseph K. [84] Hutchinson as defendants, an order was given on the 21st day of December, 1914, in the above entitled proceeding, which said order denied the motion of the defendants above named for an order vacating the order granting an injunction *pendente lite* in the above entitled action therefore and on the 11th day of December, 1914, given, made and entered in the above-entitled proceeding, and for a further order dissolving the injunction *pendente lite* issued pursuant to said order of the 11th day of December, 1914, and the said Thomas W. Pack, Stella Schuler and Joseph K. Hutchinson, having obtained or being about to obtain an order allowing an appeal to reverse the said order in the aforesaid suit, and a citation directed to the said E. Thompson citing and ad-

monishing her to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California, within thirty days from the date thereof;

Now, the condition of the above obligation is such that if the said Thomas W. Pack, Stella Schuler and Joseph K. Hutchinson shall prosecute said

and all F. M. K.  
N. P.  
appeal to effect ~~an~~ answer ~~of~~ damages and costs if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

[Seal]

UNITED STATES FIDELITY & GUAR-  
ANTY COMPANY.

By W. H. Shroder, [Seal]  
Its Attorney in Fact.

The addition of the words “and” and “all” in line 19 hereof is made with the full authority of the United States Fidelity and Guaranty Co.

W. H. SHRODER,  
Atty. in Fact.

(On margin:) “The premium on this bond is 5.00.  
W. H. Shroder, Atty. in fact.”

(Two documentary stamps, 2½ cents, cancelled by  
U. S. Fidelity & Guaranty Co., Dec. 24, 1914.) [85]

State of California,  
County of Los Angeles,—ss.

On this 26th day of December in the year one thousand nine hundred and fourteen, before me, Frank M. Kelsey, a Notary Public in and for said County and State, residing therein, duly commis-

sioned and sworn, personally appeared W. H. Shroder known to me to be the duly authorized Attorney-in-fact of THE UNITED STATES FIDELITY AND GUARANTY COMPANY, and the same person whose name is subscribed to the within instrument as the Attorney-in-fact of said company, and the said W. H. Shroder duly acknowledged to me that he subscribed the name of THE UNITED STATES FIDELITY AND GUARANTY COMPANY thereto as principal and his own name as Attorney-in-fact.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

FRANK M. KELSEY,

Notary Public in and for Los Angeles County, State of California. [86]

[Indorsed]: No. B. 50—Equity. In the United States District Court, in and for the Southern District of California, Southern Division. E. Thompson, Complainant, vs. Thomas W. Pack, et al., Defendants. Undertaking on Appeal. Filed Dec. 26, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

Form and Sufficiency of Surety to within undertaking approved this 26th day of December, 1914.

BENJAMIN F. BLEDSOE,

Judge.

CHARLES W. SLACK,

JOSEPH K. HUTCHINSON,

Solicitors for Defendants, 923 First National Bank Bldg., San Francisco. Cal. [87]

*In the District Court of the United States in and for  
the Southern District of California.*

No. B. 50—EQUITY.

E. THOMPSON,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and  
JOSEPH K. HUTCHINSON,

Defendants.

**Praeceptum for Record Upon an Appeal.**

To the Clerk of the District Court of the United  
States, in and for the Southern District of Cali-  
fornia, Southern Division:

SIR:—

You are hereby instructed to prepare a certified copy of the record in the above-entitled proceeding for use upon an appeal from the order heretofore given, made and entered in the above-entitled proceeding on the 21st day of December, 1914, denying the above-named defendants' motion for an order vacating the order granting an injunction *pendente lite* in the above-entitled proceeding theretofore and on the 11th day of December, 1914, given, made and entered in the above-entitled proceeding, and for a further order dissolving the injunction *pendente lite* issued pursuant thereto; said record will be made up of the following papers, records and proceedings in the above-entitled proceeding:

The bill of complaint therein;

The temporary restraining order and order to

show cause given, made and entered therein on the 24th day of November, 1914;

The minute order given, made and entered in the above-entitled proceeding upon the return of said order to show cause on the 7th day of December, 1914, showing the making of a motion *ore tenus* to dissolve said temporary restraining order and submitting said application for injunction and said motion; [88]

The minute order given, made and entered in the above-entitled proceeding on the 11th day of December, 1914, granting the said complainant's application for an injunction *pendente lite*;

The order given, made and entered in said proceeding on the 11th day of December, 1914, which said order restrained and enjoined defendants from doing certain acts more particularly described in the bill of complaint above referred to and said order;

The injunction *pendente lite* issued pursuant to said last-named order, which said injunction is dated the 15th day of December, 1914;

The notice of motion of the above-named defendants for an order vacating the order granting an injunction *pendente lite* in the above-entitled proceeding theretofore and on the 11th day of December, 1914, given, made and entered in the above-entitled proceeding, and for a further order dissolving the injunction *pendente lite* issued pursuant thereto, which said notice of motion was filed and is marked as filed in the above-entitled proceeding on the 14th day of December, 1914;

The affidavit of Thomas W. Pack, one of the de-



defendants above named which said affidavit is referred to in said notice of motion last above named, and which said affidavit was filed and is marked as filed in the above-entitled proceeding on the 14th day of December, 1914;

The affidavit of Stella Schuler, one of the defendants in the above-entitled proceeding, which said affidavit is referred to in said notice of motion last above named, and which said affidavit was filed and is marked as filed in the above-entitled proceeding on the 14th day of December, 1914;

The affidavit of Joseph K. Hutchinson, one of the defendants above named, which said affidavit is referred to in said notice of motion last above named, and which said affidavit was filed [89] and is marked as filed in the above-entitled proceeding on the 14th day of December, 1914;

The minute order of the above-entitled Court continuing said motion last above-named from the 19th day of December, 1914, to the 21st day of December, 1914;

The order given, made and entered in the above-entitled proceeding on the 21st day of December, 1914, which said order denied said motion for an order vacating the order granting an injunction *pendente lite* in the above-entitled proceeding and for a further order dissolving the injunction *pendente lite* issued pursuant thereto;

The assignment of error of the above-named defendants filed with their petition for an order allowing the appeal above specified and referred to;

You will forthwith make up your certified copy of

the foregoing papers and transmit the same, with the original petition for an order allowing an appeal and the citation issued thereon, with the return of the service of said citation, to the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, at San Francisco, California.

San Francisco, Cal., December 23d, 1914.

CHARLES W. SLACK,

JOSEPH K. HUTCHINSON,

Solicitors for Defendants. [90]

[Indorsed]: Service of the Within Praecipe for Record on Appeal this 23d day of December, 1914, is Hereby Admitted. H. L. Clayberg, Clayberg & Whitmore, Attorneys for Complainant.

No. B. 50—Equity. In the United States District Court, in and for the Southern District of California, Southern Division. E. Thompson, Complainant, vs. Thomas W. Pack, et al., Defendants. Praecipe for Record upon Appeal, (Order of Dec. 21, 1914.) Original. Filed Dec. 26, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Charles W. Slack, Joseph K. Hutchinson, Solicitors for Defendants, 923 First National Bank Bldg., San Francisco, Cal., [91]

[Certificate of Clerk U. S. District Court to  
Transcript of Record.]

*In the District Court of the United States, in and for  
the Southern District of California, Southern  
Division.*

No. B. 50—EQUITY.

E. THOMPSON,

Complainant,

vs.

THOMAS W. PACK, STELLA SCHULER and  
JOSEPH K. HUTCHINSON,

Defendants.

I, WM. M. VAN DYKE, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing ninety-one (91) typewritten pages, numbered from 1 to 91 inclusive, and comprised in one (1) volume, to be a full, true and correct copy of the Bill of Complaint, Temporary Restraining Order and Order to Show Cause, Minute Orders of the 7th, 8th, and 11th days of December, 1914, respectively, Opinion of the Court upon making order granting motion for injunction *pendente lite*, Order granting injunction *pendente lite*, Notice of Motion of defendants for order vacating order granting injunction *pendente lite*, and for a further order dissolving injunction *pendente lite*, Affidavits of Joseph K. Hutchinson, Thomas W. Pack, and S. Schuler, respectively, Minute Orders of December 18 and 21, 1914, respectively, Order denying motion for order

vacating order granting injunction *pendente lite*, and for a further order dissolving injunction *pendente lite*, Assignment of Error, Petition for and Order Allowing Appeal, Undertaking on Appeal, and Praecipe for Transcript of Record on Appeal in the above and therein-entitled action; and I do further certify that the above constitute the record on appeal in said action as specified [92] in the said praecipe for transcript of record on appeal, filed on behalf of the appellants in said action.

I do further certify that the cost of said transcript is \$53.20, the amount whereof has been paid me by Thomas W. Pack, Stella Schuler and Joseph K. Hutchinson, the appellants in said action.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court of the United States of America, in and for the Southern District of California, Southern Division, this 30th day of December, in the year of our Lord, one thousand nine hundred and fourteen, and of our Independence, the one hundred and thirty-ninth.

[Seal]

WM. M. VAN DYKE,

Clerk of the District Court of the United States of America, in and for the Southern District of California.

[Ten Cents Internal Revenue Stamp. Canceled Dec. 30, 1914. Wm. M. V. D.] [93]

[Endorsed]: No. 2539. United States Circuit Court of Appeals for the Ninth Circuit. Thomas W. Pack, Stella Schuler and Joseph K. Hutchinson, Ap-

pellants, vs. E. Thompson, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

Filed December 31, 1914.

FRANK D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.



